

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
V. : Tuesday, June 24, 2008
 :
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
 :
Defendants : AFTERNOON SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 9
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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EXHIBITS

NUMBER ADMITTED

(No Exhibits Moved into Evidence.)

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PROCEEDINGS

1 THE COURT: Mr. Gingold?
2 MR. GINGOLD: Good afternoon. Thank you.
3 BY MR. GINGOLD:
4 Q. Just a couple of items to clean up before we move on. If we
5 can bring up Plaintiffs' 189-C, please. And if we can focus on
6 the 1988 row, with particular attention to the last four
7 columns.
8 Do you recall me asking you questions as to why there
9 are blank spaces under disbursement rate, AR-171 disbursement
10 rate, percentage of receipts, and disbursement adjustment ratio,
11 percent of actual disbursements?
12 A. Yes, I do.
13 Q. Do you recall what your answer was?
14 A. Yes, I do. I do know.
15 Q. During the break did you refresh your recollection?
16 A. I did.
17 Q. Okay. What is the answer to that question?
18 A. What happens is the CP&R data is on a calendar year basis,
19 and because it's on a calendar year basis, the EFT information
20 we had and available we calculated on a calendar year basis.
21 And so the CP&R and EFT disbursements, the total funds that went
22 out, are calculated on a calendar basis. The revenues during
23 this time period are on a government fiscal year basis, so they
24 don't match up exactly.
25

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1 So what we did is to take a standard convention to
 2 convert calendar year to fiscal year, by taking essentially
 3 9/12ths of one year plus 3/12ths of the previous year, to create
 4 an average for the fiscal year. So what happens when you do
 13:49:01 5 that, and you have to look back for 1987, for which there was
 6 not complete information in the CP&R, we didn't have what the
 7 disbursements would have been for 1988, so therefore a
 8 disbursement rate was not calculated for that year.
 9 MR. GINGOLD: In that regard, Antonio, could you put on
 13:49:21 10 the screen DX-272? If we can go to page 18 of DX-272, please.
 11 And if we can focus in on the top of the page.
 12 BY MR. GINGOLD:
 13 Q. There's a statement on the top of this page above the
 14 columns for year, records, and account. Do you see that,
 13:49:49 15 Dr. Palmer?
 16 A. I do. And it says it's by calendar year. I will also note
 17 that there's some information here for 1987, but elsewhere in
 18 this document it explains that the information from 1987 is
 19 incomplete, it's only partial year information.
 13:50:06 20 So therefore, by taking a fraction of that, it would be
 21 an incomplete number, so we weren't able to use the 1987
 22 information either.
 23 Q. Thank you, Dr. Palmer.
 24 MR. GINGOLD: If we can put PX-189A back up on the
 13:50:26 25 screen, please, and if we can go to the fourth page. If we can
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1 there were additional information that would be brought forward,
 2 if there was a full accounting, for example, then we wouldn't
 3 have to estimate.
 4 So we used whatever information were available to us,
 13:52:37 5 was available to us, so this number is based upon the available
 6 information.
 7 MR. GINGOLD: Plaintiffs would like to mark for
 8 identification Exhibit 192. This is identified as Attachment A,
 9 specific relief analysis.
 13:53:14 10 BY MR. GINGOLD:
 11 Q. Did you prepare this document?
 12 A. Yes. It was prepared under my supervision.
 13 Q. Why did you prepare the document?
 14 A. Plaintiffs had indicated that they had a specific relief
 13:53:28 15 alternative analysis, and had asked me to quantify that using a
 16 different interest rate number.
 17 So all of the columns in this Attachment A are
 18 identical except for the interest rate that's being used.
 19 MR. WARSHAWSKY: Your Honor, at this point the
 13:53:47 20 government is going to object to this line of questioning. This
 21 is with regard to a new claim, it's not rebuttal to anything
 22 that was in the case-in-chief, certainly was not presented in
 23 the plaintiffs' case-in-chief. It's essentially a damages
 24 claim, and we can certainly argue about that, but fundamentally
 13:54:05 25 it's not proper rebuttal.
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1 focus in on the benefit conferred total towards the bottom of
 2 the page.
 3 BY MR. GINGOLD:
 4 Q. Dr. Palmer, do you recall me asking you a question as to
 13:51:10 5 whether or not this benefit conferred total is higher or lower
 6 than the previous total that the CRA model produced?
 7 A. I believe the question you asked me was what the prior
 8 number was, and I couldn't recall. I did look during the break
 9 at a document, which was an amount from the previous model, and
 13:51:31 10 it was about \$10 billion higher. So this number is about
 11 \$10 billion lower.
 12 Q. Dr. Palmer, you testified that you relied on information
 13 provided during this trial. Correct?
 14 A. That is correct.
 13:51:48 15 Q. You also testified that you made modifications in the data
 16 based on what you heard in this courtroom. Correct?
 17 A. That is correct.
 18 Q. Do you believe that your benefit conferred totals are a
 19 reasonable approximation of what the benefit conferred has been
 13:52:08 20 on the government?
 21 A. Based upon the available information to us, that this is, I
 22 believe, a reasonable calculation, again, conditional upon that
 23 information.
 24 Q. What is conditional upon that information?
 13:52:23 25 A. The information -- we used the best information we had. If
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1 THE COURT: Well, I don't understand what it is yet, so
 2 I want to hear what it is, Mr. Warshawsky. Objection overruled.
 3 MR. GINGOLD: Thank you, Your Honor.
 4 BY MR. GINGOLD:
 13:54:18 5 Q. Dr. Palmer, did you modify your model to perform the
 6 specific relief analysis?
 7 A. As I indicated, the model is the same, all of the input data
 8 are the same except for the rate that is used in Column H. But
 9 everything else is identical.
 13:54:35 10 Q. What rate did you use in Column H?
 11 A. Column H is a blended rate that is based upon a statutory
 12 rate and a bank rate. So it's blended between the two.
 13 THE COURT: Blended?
 14 THE WITNESS: It's a weighted average, that there's a
 13:55:03 15 sum in a bank and then there is a statutory amount, and it's a
 16 weighted average of those two, so it's blended.
 17 BY MR. GINGOLD:
 18 Q. Is blending rates a conventional process?
 19 A. Well, an alternate way to think about it is an average rate
 13:55:18 20 for a portfolio would be another similar way of thinking about
 21 it. If there were different rates being used for different
 22 assets within a portfolio, you could say the rate for the entire
 23 portfolio. So it's a standard convention to get an average.
 24 Q. You said statutory. What were you referring to when you
 13:55:37 25 said statutory?
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1 A. Plaintiffs had provided to me again some statutes that
 2 indicated that there were certain rates that were required to be
 3 paid on funds.
 4 MR. GINGOLD: Plaintiffs would like to mark for
 13:55:52 5 identification Exhibit 184.
 6 BY MR. GINGOLD:
 7 Q. This is Title 31, U.S.C. 9702, Investment of Trust Funds.
 8 Have you seen this before?
 9 A. Yes.
 13:56:13 10 Q. And is this one of the statutes that plaintiffs' counsel
 11 provided to you in your preparation of the interest rates?
 12 A. That is correct.
 13 Q. And it states as follows: "Except as required by a treaty
 14 of the United States, amounts held in Trust by the United States
 13:56:30 15 government, including annual interest earned on the amounts,
 16 one, shall be invested in government obligations, and two, shall
 17 earn interest at an annual rate of at least five percent."
 18 Did you use that five percent floor factor in your
 19 calculations at all?
 13:56:50 20 MR. WARSHAWSKY: Your Honor, again we'll object. This
 21 is not a benefits analysis anymore. Now he's talking about
 22 interest that should have been earned based on a statute.
 23 THE COURT: Easier for me to listen to it than to
 24 sustain the objection, counsel. Overruled.
 13:57:05 25 MR. GINGOLD: Thank you, Your Honor.
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1 and before, but not after 1994.
 2 Q. And specifically the statute reads: "The Secretary shall
 3 make payments to an individual Indian in full satisfaction of
 4 any claim of such individual for interest on amounts deposited
 13:58:52 5 or invested on behalf of such individual before October 25,
 6 1994, retroactive to the date the Secretary began investing
 7 Individual Indian Monies on a regular basis, to the extent the
 8 claim is identified."
 9 Did you apply a rate other than the five percent rate
 13:59:11 10 to the funds deposited before October 25, 1994?
 11 A. To funds that we identified that were held in banks, we
 12 applied a bank rate to those monies. We used the information
 13 provided by Dr. Kehoe in his testimony to come up with an
 14 estimate of funds in banks versus funds held that were not in
 13:59:35 15 banks.
 16 Q. What rate did you apply for funds deposited or invested
 17 after October 25, 1994?
 18 A. Well, we used when available -- there were funds that were
 19 invested that we had a rate from the BIA, and we used that rate
 13:59:53 20 for those funds. And then we had a bank rate for the bank.
 21 MR. GINGOLD: Plaintiffs would like to mark for
 22 identification Exhibit 185. This is 25 U.S.C. Section 161(a).
 23 And the headnote reads: "Tribal funds in trust in Treasury
 24 Department; investment by Secretary of the Treasury; maturities;
 14:00:27 25 interest; funds held in trust for individual Indians."
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1 A. Yes, I did use this five percent floor.
 2 BY MR. GINGOLD:
 3 Q. And how did you employ the five percent standard?
 4 A. What I did is to look at monies that were held by the U.S.
 13:57:17 5 government, so I took the total trust amount, those that were
 6 held by the U.S. government, applied a floor of five percent,
 7 and those that were held in banks, applied a bank rate, and then
 8 the fraction that was in each created a weighted average between
 9 the two, to get the blended rate that's presented in
 13:57:36 10 Attachment A.
 11 Q. You did not use -- did you just testify you did not use a
 12 blended rate for funds held in banks?
 13 A. The funds held in banks, it was also somewhat of a blended
 14 rate because some were held in time deposits, some were held in
 13:57:54 15 checking accounts, and so that also was a blended rate to adjust
 16 for the fact that there were different instruments being used.
 17 Q. Did you employ a five percent floor in that analysis?
 18 A. Not in the banks, no.
 19 MR. GINGOLD: Plaintiffs would like to mark for
 13:58:12 20 identification Exhibit 186. If we can focus on the first
 21 paragraph, please.
 22 BY MR. GINGOLD:
 23 Q. Is this another statute that plaintiffs' counsel provided to
 24 you in your calculations?
 13:58:31 25 A. Yes. We used this to apply the five percent floor from 1994
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1 BY MR. GINGOLD:
 2 Q. I would like you to turn your attention to paragraph B.
 3 Have you seen this paragraph before?
 4 A. Yes, I believe I have.
 14:00:36 5 Q. Is this what you relied on to calculate the interest for
 6 funds deposited after October 25, 1994?
 7 A. We used -- when available we used the rate that was provided
 8 to us that was the BIA rate. We had that -- defendants provided
 9 that, I believe. It was an exhibit we had.
 14:01:00 10 Q. Now let's go back to Plaintiffs' 192. Let's deal with the
 11 interest rate itself and how you applied it. Can you please
 12 explain that to the Court?
 13 A. Well, this is applied in the same manner, this is the same
 14 model as we had before that we had discussed earlier today in
 14:01:34 15 Attachment A. We are now using the blended rate instead of the
 16 10-year bond rate. So before the calculation was benefit to the
 17 government, and this is now looking at the same nominal dollars
 18 but now using the statutory rate instead.
 19 Q. Do you recall whether these rates are higher or lower than
 14:01:58 20 the rates identified in the benefit conferred analysis?
 21 A. On average these -- I don't remember specifically year by
 22 year, but these rates are higher because the bottom line is
 23 higher.
 24 Q. For funds that were held in banks up until 1933, what rate
 14:02:23 25 did you apply?
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1 A. There again, it was a bank rate that we had estimated.
 2 Q. And for funds held in Treasury after 1933, what rate did you
 3 apply?
 4 A. After 1933, there was the five percent floor, and then up to
 5 1994 and after that we had used, as we discussed earlier, the
 6 BIA rate, when available.
 7 MR. GINGOLD: If we can go to page four of
 8 Plaintiffs' 192.
 9 BY MR. GINGOLD:
 10 Q. There's a column on the far right, it's Column J, headed
 11 "Accumulated Dollars, End of Year." And there is no number in
 12 the total there, is there?
 13 A. No. Again, this is similar to Attachment A. The only
 14 difference of this entire attachment are just the interest rates
 15 that are used in Column H, so the calculations will be different
 16 but -- the calculated numbers will be different, the
 17 calculations are the same. And therefore the bottom line here
 18 is 62 billion, and hence my deduction that these rates are on
 19 average higher than the 10-year bond rate.
 20 Q. Do you believe that's a reasonable approximation of your
 21 understanding of the statutory obligation to pay interest to the
 22 Trust beneficiaries?
 23 A. The blended rate and the theory behind what the statutory
 24 obligation was was provided to me by counsel. I just applied a
 25 quantification of that, and this is the result of that

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1 Q. And was that before, after, or about the same time that
 2 Professor Cornell was engaged?
 3 A. Professor Cornell was engaged at the same time. The firm
 4 CRA was engaged, so it would have been the same time.
 5 Q. Is it fair to say that you've been working on this project
 6 with Professor Cornell all that time since the engagement?
 7 A. I was involved with the initial discussions, I was involved
 8 in other matters in the interim. So I haven't been full-time on
 9 this in all the time, but I have been involved since its
 10 inception.
 11 Q. When did you become back involved on a full-time basis?
 12 A. As we were preparing for trial, I became involved back on a
 13 full-time basis.
 14 Q. And approximately when was that?
 15 A. About the time we started finishing the Attachment A, we
 16 started working on the finalization of Attachment A. We had
 17 done it earlier, worked on that, and then as we were doing some
 18 more work on that, so I would imagine it would have been
 19 sometime in May, probably.
 20 Q. When you're talking about finalizing Attachment A, are you
 21 talking about the version that was filed with the plaintiffs'
 22 brief in March, or are you talking about the version that was
 23 presented by Professor Cornell?
 24 A. I was involved in the version that was presented in March,
 25 and then as I mentioned finalizing, it was the version that was

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1 quantification. It's based on the exact same model that we had
 2 used before.
 3 Q. Do you believe that's a reasonable approximation of the
 4 amount that would be reflected in the interest rates authorized
 5 by statute?
 6 A. I just want to say, conditional upon the data, which was
 7 before, and conditional upon the understanding that plaintiffs
 8 provided to me of the rate, yes, I think it's reasonable.
 9 MR. GINGOLD: No further questions, Your Honor.
 10 THE COURT: All right.
 11 CROSS-EXAMINATION
 12 BY MR. WARSHAWSKY:
 13 Q. Good afternoon, Dr. Palmer.
 14 A. Good afternoon.
 15 Q. My name is John Warshawsky with the Justice Department. I
 16 know you've testified a number of times from your CV, but just
 17 to be sure, if there's any question I ask that you would like me
 18 to clarify it or rephrase, please let me know and I'll be happy
 19 to work with you. Okay?
 20 A. Okay.
 21 Q. Dr. Palmer, when were you first hired to work on the Cobell
 22 case?
 23 A. I believe it was around December, December of '07 or earlier
 24 this year. Sometime in that time frame, I don't remember
 25 exactly when. But let's say within the last six months.

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1 presented with Dr. Cornell, which I believe was pretty much the
 2 same thing.
 3 Q. Basically it was just rounding some numbers down, like from
 4 billions to millions and millions to billions. Is that right?
 5 A. I don't remember the specific changes.
 6 Q. The basic numbers in the March version and the version
 7 presented in the case-in-chief by Professor Cornell, those
 8 numbers didn't really change. Is that correct?
 9 A. I don't believe they did. The model didn't change.
 10 Q. Prior to your becoming involved in this case have you ever
 11 been involved in any aspect of the Individual Indian Money
 12 system?
 13 A. No.
 14 Q. Had you ever read or published -- had you ever published any
 15 articles regarding the Individual Indian Trust system?
 16 A. No, I have not.
 17 Q. How did you first learn that you might be required to serve
 18 as a rebuttal witness in this case?
 19 A. When CRA was originally retained in this matter, they had
 20 asked for my CV as well as Professor Cornell's, and so they were
 21 looking for potentially multiple experts. So I was aware that
 22 there may be a possibility.
 23 I was here with Professor Cornell as we sat through the
 24 defendant's case, and then he had to return because he had
 25 rescheduled a deposition hoping the case was going to be -- he

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1 would be testifying last week, and it didn't happen, and he had
 2 to go. So at that point I became the rebuttal witness.
 3 Q. Okay. And the reason I ask, you were never identified until
 4 last week as being a witness in this case. Correct?
 14:08:47 5 A. That is correct.
 6 Q. And you said that Professor Cornell couldn't be here today
 7 because he had a deposition?
 8 A. Yes. He had a deposition in a matter, and he had
 9 rescheduled that. And the discovery was closing and he had to
 14:09:03 10 be on the West Coast for that deposition, so he was not able to
 11 attend.
 12 Q. When did that deposition take place?
 13 A. It took place -- what's today, Tuesday?
 14 Q. Yes.
 14:09:13 15 A. The deposition took place yesterday.
 16 Q. When did discovery close in that case?
 17 A. That was the last day it could happen.
 18 Q. Now, you've testified in a lot of matters before. Right?
 19 A. That's correct.
 14:09:25 20 Q. And you've testified in trial?
 21 A. I have.
 22 Q. You have?
 23 A. Yes.
 24 Q. And you've testified in depositions?
 14:09:32 25 A. That is correct.

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1 A. And prior -- for example, Dr. Scheuren's testimony, I
 2 reviewed his calculations. I reviewed the calculations that
 3 went into Attachment A and how those would change based upon the
 4 new information that we had received.
 14:10:59 5 Q. Well, when did you start preparing the calculations that
 6 ended up in what ultimately appears as Plaintiffs'
 7 Exhibit 189-A?
 8 A. I believe it was after the last of the defendants' experts,
 9 so that was probably Thursday evening we started on those
 14:11:15 10 calculations.
 11 Q. And would you describe the process for preparing those
 12 calculations?
 13 A. Certainly. We reviewed the transcripts that we had, putting
 14 those into making sure we had the right information. We also
 14:11:33 15 received the PACER database, I believe on Friday, that had the
 16 information regarding electronic funds transfer. So we
 17 incorporated that information after analyzing that. So it was
 18 kind of a process of updating the different fields with
 19 information we received, and making sure we validated against
 14:11:52 20 the testimony that we had heard.
 21 Q. Now, when you're using the term we, who are you referring
 22 to?
 23 A. There are colleagues of mine at CRA who also worked on this
 24 project.
 14:12:04 25 Q. Who is that?

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1 Q. What's more important, to be in court or be at a deposition?
 2 MR. GINGOLD: Objection, Your Honor.
 3 THE COURT: Sustained.
 4 BY MR. WARSHAWSKY:
 14:09:41 5 Q. Did you discuss the fact that you would be testifying
 6 instead of Professor Cornell with Professor Cornell?
 7 A. Yes.
 8 Q. Tell me what -- tell the Court what Professor Cornell
 9 explained to you as to why you needed to testify.
 14:09:55 10 MR. GINGOLD: Objection, Your Honor.
 11 THE COURT: Sustained. He's here testifying, he's your
 12 witness. Let's deal with him.
 13 MR. WARSHAWSKY: Very good, Your Honor.
 14 BY MR. WARSHAWSKY:
 14:10:11 15 Q. After you learned that you were going to be the testifying
 16 witness in the rebuttal case, what did you do to prepare?
 17 A. I reviewed the calculations and the material that we used to
 18 support those calculations, also part of my preparation for this
 19 was as I sat through the testimony of defendants' experts,
 14:10:32 20 learning that information and being able to think of when it
 21 would be used and how we could use that information in our
 22 model.
 23 Q. And when you said you reviewed the calculations, are you
 24 referring to the ones that went into the original Attachment A
 14:10:43 25 that Professor Cornell talked about?

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1 A. One of the persons is Pat Breslin, John Hirshleifer. There
 2 are also many others.
 3 Q. Were they all working Thursday and Friday on this?
 4 A. Yes. John wasn't, but Pat was. And we had another team of
 14:12:14 5 other people as well. Clarence was working on this, Seth was
 6 working on this, Kate. Numerous people working on both those
 7 days.
 8 Q. And the only people that worked on Plaintiffs' Exhibit 189-A
 9 were employees of CRA?
 14:12:29 10 A. That's correct.
 11 Q. Now let me ask you about -- I do want to get back to the
 12 subject that Mr. Gingold was asking you about at the very end
 13 there, your benefits conferred analysis. You said that that was
 14 your opinion based upon -- or you said conditioned upon data or
 14:12:56 15 something like that. What did you mean by that?
 16 A. The analysis is based upon the available input data. As has
 17 been discussed in this trial and there are concerns about if
 18 it's good information or the quality of the information.
 19 Therefore, the analysis is only as good as the inputs to the
 14:13:15 20 information.
 21 Q. I would like to ask you -- if we could pull up 189-A,
 22 please.
 23 And I would like you to go to the 1934 line, which I
 24 believe is on the second page. Do you remember, with respect to
 14:14:12 25 the 1934 line, you talked about the nominal benefit figure minus

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1 \$6.5 million?
 2 MR. WARSHAWSKY: Do you want to blow that up? No, not
 3 highlight, just blow it up. Well, that doesn't help.
 4 BY MR. WARSHAWSKY:
 14:14:38 5 Q. If you look above the yellow line, we're looking at -- we're
 6 eventually going to get there. Do you remember the minus
 7 \$6.5 million figure from 1934?
 8 A. As I see it here, yes.
 9 Q. And explain again why you thought it was significant that
 14:15:00 10 that number went down.
 11 A. I don't know that I indicated any significance to it. The
 12 reason it had gone down is because disbursements were greater
 13 than receipts that year.
 14 Q. But you didn't attribute it to money going into the system,
 14:15:18 15 out of the system? You had been talking about this in the
 16 context of banks and the Glass-Steagall Act, I believe. Right?
 17 A. The negative sign there is that disbursements are greater
 18 than revenues, so therefore that the flow into -- the outflow of
 19 the Trust in that year was greater than the inflow of the Trust
 14:15:38 20 in that year.
 21 Q. You weren't attributing it to any particular factor in your
 22 discussion about the Glass-Steagall Act, though, were you?
 23 A. No.
 24 Q. In fact, in your analysis, did you find it to be an unusual
 14:15:56 25 circumstance for disbursements to exceed collections in a given
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1 year?
 2 A. There were not many instances of it, that's correct.
 3 Q. You did not see many instances. Is that correct?
 4 A. I did not.
 14:16:05 5 Q. But you reviewed the data provided by the government from
 6 Michelle Herman and Dr. Angel, did you not?
 7 A. I did.
 8 Q. And you did see instances there where there were greater
 9 disbursements than collections in a given year. Right?
 14:16:22 10 A. And as I testified earlier today, when we had actual
 11 information of disbursements from the checks and EFTs and
 12 observed that -- when we had the actual information versus the
 13 numbers that Michelle Herman had, her numbers were often higher
 14 during that period, so we had adjusted the numbers accordingly.
 14:16:42 15 Q. My question was, when you looked at the data from Michelle
 16 Herman and from Dr. Angel, you did see a number in quite a few
 17 more years where there were disbursements in excess of
 18 collections. Right?
 19 A. From their data that they reported, yes.
 14:16:56 20 Q. Were you present for the testimony of Gary Grippo?
 21 A. I can't remember if I read it or if I heard it. But I'm
 22 somewhat familiar with it.
 23 Q. And why do you believe you're somewhat familiar with it?
 24 A. I'm sorry, I just don't remember everyone. I sat through a
 14:17:14 25 lot of testimony and I don't remember everyone.
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1 Q. Do you remember a witness testifying about how the
 2 government makes borrowing decisions?
 3 A. Yes, he did testify -- a government witness did testify
 4 about that.
 14:17:26 5 Q. Okay. And do you recall that decision is made based on
 6 billions of dollars?
 7 A. Based on billions of dollars?
 8 Q. Right.
 9 A. I don't remember the exact testimony, but...
 14:17:40 10 Q. Well, I don't know if I can use this or not. But I'm
 11 reading from page 1242, this is Mr. Grippo's testimony, June 18
 12 in the afternoon session.
 13 Question: "When the financing group makes the
 14 decisions of what to borrow and how much, does it borrow down to
 14:18:09 15 the penny?"
 16 Answer: "No."
 17 Question: "How does that work?"
 18 Answer: "We borrow in billion dollar increments, and
 19 so as we are looking at these balances we are making a
 14:18:20 20 determination whether to increase or decrease the borrowing by
 21 at least a billion dollars."
 22 Do you remember that testimony, sir?
 23 A. That sounds familiar.
 24 Q. I beg your pardon?
 14:18:30 25 A. That sounds familiar.
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1 Q. And how did you consider that testimony in your benefits
 2 analysis?
 3 A. That was not incorporated in any way in what we did, that
 4 the government makes decisions based on billions of dollars.
 14:18:48 5 According to the testimony, those billions of dollars are
 6 comprised of all the individual monies that come into it, so it
 7 didn't affect our analysis.
 8 Q. And just to be clear, your analysis hasn't actually made a
 9 determination that the government decided to benefit from
 14:19:03 10 additional funds that you've attributed to the IIM. Right?
 11 A. I have not determined what the government has decided, if
 12 that's your question.
 13 Q. Right. I mean, you haven't actually made a determination
 14 whether the government made a decision to take into
 14:19:24 15 consideration additional funds from the IIM, have you?
 16 A. The funds were available to the government; whether they --
 17 I guess I don't understand the question, because the funds are
 18 available to the government. If it decides to use the IIM
 19 funds, they're available to the government, and so it's part of
 14:19:41 20 its calculation.
 21 Whether the government makes decisions about funds it
 22 has available and funds it needs, I don't know that they say
 23 which dollar they need from which fund. They have a fund, they
 24 have a balance that they have available to them, and they make a
 14:19:56 25 decision based upon the balance, not upon each individual fund
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1 or whatever their holding that comprises that total dollar
 2 amount.
 3 Q. So Dr. Palmer, you agree it's the government that makes the
 4 decision. Right?
 5 A. The government has funds available to it and it makes
 6 decisions what to do with the funds that are available to it.
 7 Q. And let me read a little bit more from Mr. Grippo's
 8 testimony. This is on page 1243, beginning at line six.
 9 Question: "Now, we looked earlier at the \$336 million
 10 annual IIM receipts, gross receipts. Do you recall that?"
 11 Answer: "Yes."
 12 Question: "What would that be in weekly terms?"
 13 Answer: "It would be roughly 6 million, 330 by 52."
 14 Question: "Would the weekly \$6 million in gross IIM
 15 receipts impact the decisions about whether and how much to
 16 borrow?"
 17 Answer: "It would not."
 18 Do you remember that testimony?
 19 A. It sounds familiar.
 20 Q. And so Mr. Grippo was testifying that an additional
 21 \$6 million of IIM receipts wouldn't influence a borrowing
 22 decision. Right?
 23 A. His testimony was about how much on a weekly basis. We're
 24 looking at a cumulative amount, and if something were a rounding
 25 error in Mr. Grippo's terms, then funds are still available to
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1 Q. And were you given that instruction, by the way, before or
 2 after you finished the analysis that's become Plaintiffs' 189-A?
 3 A. 189 -- the instruction was given before, because we were
 4 doing it concurrently. 189-A was being finished on Saturday.
 5 We were asked to start preparing this calculation, and then this
 6 calculation was finished subsequent to the 189-A, I believe you
 7 called it.
 8 Q. I believe Plaintiffs' 189-A is the Attachment A analysis.
 9 A. Okay.
 10 Q. From this morning.
 11 A. From this morning?
 12 Q. Right. I'm sorry, the one that you discussed this morning.
 13 A. Yes, yes, we had finished that one up on Saturday. The
 14 process of preparing the rates here was started on Saturday and
 15 finished into Sunday.
 16 Q. When did you finish Plaintiffs' 189-A, by the way?
 17 THE COURT: Mr. Warshawsky, I'm sorry that I had a good
 18 weekend and nobody else had one. But I don't really care when
 19 these things were finished. What's the relevance of this? You
 20 want to get him to say, oh, my god, the other number is too low,
 21 let's find a higher number. Is that the point?
 22 MR. WARSHAWSKY: I'm trying to understand the
 23 instructions that were given for the preparation.
 24 THE COURT: You may care but I don't, so be guided
 25 accordingly.
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1 the government for its use. And the funds that are available
 2 totally comprised of accounts that are held by the government.
 3 So it may look at a big picture, but that big picture
 4 is comprised of lots of little things that are added together to
 5 get there.
 6 Q. This is basic economic theory that you're talking about.
 7 Right?
 8 A. It's the way that a system would work.
 9 Q. I mean, this is a theoretical analysis that you're
 10 presenting. Right?
 11 A. What we're presenting here is a calculation of funds that
 12 are available to the government that then are for its benefit.
 13 Q. I would like to ask you a few questions about, I believe you
 14 marked it Plaintiffs' 192, the alternative calculation?
 15 Dr. Palmer, when were you asked to begin preparing the
 16 specific relief analysis, Plaintiffs' Exhibit 192?
 17 A. This was asked on Saturday.
 18 Q. And so you're -- you're referring to three days ago. Right?
 19 A. Three days ago we were asked to prepare this, yes.
 20 Q. And what instructions were you given with respect to the
 21 preparation of this?
 22 A. The instructions were given that we were asked to follow a
 23 statutory rate for use in some years, and then to combine that
 24 with a bank rate or what the alternative would be, and we came
 25 up with a bank rate to combine with that.
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1 MR. WARSHAWSKY: Well, I care about what you care
 2 about, Your Honor. So we'll move on.
 3 BY MR. WARSHAWSKY:
 4 Q. Now let me ask you about --
 5 MR. WARSHAWSKY: Let's go back to 189-A.
 6 BY MR. WARSHAWSKY:
 7 Q. And you said that 189-A, the model for that, that's
 8 basically the same model as the model that was used to generate
 9 Professor Cornell's model and the version that was attached to
 10 the plaintiffs' brief. Right?
 11 A. That is correct.
 12 Q. And so it's fair to say that all the analytic work certainly
 13 that went into preparing the Attachment A presented by
 14 Professor Cornell, that was Plaintiffs' Exhibit 41, all of the
 15 analytic work that went into that ended when the plaintiffs
 16 submitted the brief in March of 2008. Right?
 17 A. No.
 18 Q. Well, what work -- I thought you said it was just rounding
 19 between the brief and Professor Cornell's Attachment A?
 20 A. Well, I guess I'm not sure -- analytic work, continued work
 21 was done in terms of the analysis of the input data. The
 22 structure of the model did not change, but the input data was a
 23 concern and continued work was done.
 24 Q. You're aware that the government filed a brief in response
 25 to the March brief filed by the plaintiffs. Right?
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1 A. I believe that's correct.

2 Q. Did you ever review that brief?

3 A. I think I did read that.

4 MR. WARSHAWSKY: Would you put up pages 98 and 99 from

14:26:12 5 the government's brief, please?

6 BY MR. WARSHAWSKY:

7 Q. 98 and 99, if you can just look at those two. This is a

8 section regarding Tribal IIM receipts.

9 MR. WARSHAWSKY: Go back to 98, please.

14:26:48 10 BY MR. WARSHAWSKY:

11 Q. Do you remember reviewing this section of the brief?

12 A. It seems familiar.

13 Q. What is your understanding of the meaning of Tribal IIM?

14 A. Tribal IIM were -- my understanding is tribal monies that

14:27:05 15 were in the IIM Trust.

16 Q. I beg your pardon?

17 A. Tribal monies that were in the IIM Trust.

18 Q. And you said in direct examination, I believe, that you

19 weren't able to quantify the amount of Tribal IIM?

14:27:21 20 A. That's correct.

21 Q. Are you aware -- you see the highlighted section from

22 page 98 of the brief right below the quote from the Court, where

23 it says, "The receipts associated with Tribal Trust money

24 deposits are reflected in Column E of AR-171, entitled

14:27:38 25 'Tribal IIM,' which totals \$1.513 billion." Do you see that?

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1 A. I see that.

2 Q. So you were aware as of April 2008 that the government had

3 quantified this amount as being \$1.5 billion roughly. Right?

4 A. The government had an estimate. I had no idea where that

14:27:57 5 estimate had come from. During the testimony of this trial, my

6 recollection is Dr. Angel said that it was an estimate that he

7 came up with, and there was cross-examination of that, there was

8 no support for that, and there were times pointed out where the

9 number of 10 to 15 percent had been used, but there was

14:28:14 10 documentary evidence, or something I recalled, one to two

11 percent.

12 So the numbers were very different, and seeing a number

13 here of 1.5 million, we had no support for that, we had no

14 information. So again, what we were relying upon was the best

14:28:28 15 available information that we could, and this was not really

16 complete information for us.

17 Q. Okay. That's a long answer. But the question was, you were

18 aware in April that the government contended it was 1.5 billion?

19 A. We saw from the AR-171 there was an estimate of Tribal IIM

14:28:47 20 on that.

21 Q. And in fact, that \$1.513 billion was reflected in the AR-171

22 that you reviewed this morning with Mr. Gingold. Right?

23 A. That's correct.

24 Q. And what if anything did you do to follow up on the

14:29:01 25 government's quantification of this amount?

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1 A. Well, as I just mentioned in my, what you said was my long

2 answer, is that we looked at the support for those monies and

3 where those numbers had come from. It didn't seem as very

4 strong support.

14:29:19 5 Also, from the information we had, I believe it was in

6 AR-171 as well, that there were no tribal monies in the system

7 now. We looked through -- also there were the documents that we

8 had seen that tribal money should have been out of the system,

9 and then when we looked for receipts and disbursements, the

14:29:39 10 checks and EFTs that had gone out of the system, we counted

11 everything that went out of the IIM Trust.

12 Q. Now, you said there's no Tribal IIM money in the system now.

13 Do you know why that is?

14 A. Well, it said it had to be out. If I remember, there's a

14:29:55 15 document that said it had to be out.

16 Q. But you understood that -- I mean, your analysis covers the

17 life of the IIM system. Right?

18 A. That's correct.

19 Q. And at some point in time there was IIM money in the system.

14:30:08 20 Right?

21 A. There was IIM money in the system?

22 Q. At some point. You're talking about the absence of money

23 now. My question is, over the life of the system, did you do

24 anything to remove Tribal IIM money from your collections?

14:30:27 25 A. When we had, again, reported information, the 1909 to 1911,

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1 those were reported disbursement information. When we had

2 actual disbursements through checks or EFTs, those are the basis

3 we used for disbursement calculations. So if the tribal money

4 was in the system and it came out at those times, yes, then we

14:30:54 5 would have incorporated it in our analysis.

6 Q. 1909 to 1911?

7 A. 1909 to '11, also the 1988 to 2002 time period, we have all

8 the checks and EFTs that were paid out, and there was tribal

9 money in the system at that point, I believe.

14:31:08 10 Q. Can you tell Judge Robertson how much of your collections

11 figure reflects Tribal IIM money?

12 A. I cannot tell that. I don't think -- there again, the

13 documents we reviewed this morning said the auditors were not

14 able to distinguish how much was tribal and how much was

14:31:31 15 individual.

16 Q. It's fair to say, it's not been taken out of your analysis,

17 right?

18 A. There's nothing been taken out.

19 Q. You talked this morning about Osage headrights. What have

14:31:44 20 you done to gain an understanding of the nature of what an Osage

21 headright is?

22 A. I've done some reading and also talked to some individuals.

23 Q. And what have you read?

24 A. There are some reports to the, which was it -- there's some

14:32:04 25 documents and annual reports to the -- I'm not sure to whom it

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1 was, but there's an annual report I remember reading that talked
 2 about Osage headright and the Osage tribe and the head shares.
 3 Q. And you said you talked to somebody? Who did you talk to?
 4 A. I talked to counsel.
 14:32:21 5 Q. Plaintiffs' counsel?
 6 A. Plaintiffs' counsel.
 7 Q. Prior to your being involved in this, you had never heard of
 8 Osage headrights. Right?
 9 A. That is correct.
 14:32:29 10 Q. Let's refer to the Osage adjustments worksheet within
 11 Plaintiffs' Exhibit 189-A, please. And you recognize this
 12 document, don't you, sir?
 13 A. Yes, I do.
 14 Q. And I believe one of the things you did was some sort of
 15 straight line interpolation of headright shares based on
 16 Dr. Angel's testimony?
 17 A. That's correct. We had Dr. Angel testify that the headright
 18 shares were different early on, and he estimated that there were
 19 1,500 at the beginning, I believe, 1880, we have here, and then
 14:33:19 20 he said there were 2,100 in 1906. Not knowing the exact number,
 21 we did a straight line interpolation between the two points, as
 22 an estimate.
 23 Q. And you tried to consider available data whenever possible
 24 in doing your analysis. Right?
 14:33:33 25 A. That's correct.

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1 BY MR. WARSHAWSKY:
 2 Q. You see what we've got here, name of agency and tribe, and
 3 then the second column is population.
 4 A. Yes, I see that.
 14:35:21 5 MR. WARSHAWSKY: And scroll down to the Osage.
 6 BY MR. WARSHAWSKY:
 7 Q. And do you see 1,496 is the population of Osage?
 8 A. Yes, I see that.
 9 Q. Why didn't you use that number instead of your straight line
 14:35:34 10 interpolation, 1,708 for 1889?
 11 A. I didn't remember or didn't think about this information.
 12 It could be used. And if there's better information, obviously
 13 I'm happy to use it and incorporate it.
 14 Q. So if you would have used that, that would have lowered your
 15 calculation of Osage headright revenues. Right?
 14:35:56 16 A. That is correct.
 17 Q. Because what you did was you took the per share amount and
 18 multiplied it times the number of headright interests. Right?
 19 A. Right.
 14:36:07 20 Q. And then for 1889 you multiplied it times 1,708 rather than
 21 1,496?
 22 A. Right. We were trying to -- the government had put on 2,229
 23 all the way back, so we were trying to, based upon Dr. Angel's
 24 testimony, we were trying to at least make some adjustment that
 14:36:25 25 the government hadn't made to their calculations that they used.

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1 Q. Your number for 1889 is, what, 1,708 shares? I'm in
 2 Column C now of 1889.
 3 A. Yes, I see that.
 4 Q. 1,708 shares?
 14:33:50 5 A. I see that, yes.
 6 MR. WARSHAWSKY: Would you pull up Defendant's
 7 Exhibit 484, please?
 8 BY MR. WARSHAWSKY:
 9 Q. Dr. Palmer, I have had put before you what's a Commissioner
 14:34:17 10 of Indian Affairs report from 1889. Have you seen this document
 11 before, sir?
 12 A. I believe I have.
 13 Q. And did you review Commissioner of Indian Affairs reports in
 14 the course of doing your work?
 14:34:30 15 A. I reviewed several of them. I don't remember all the
 16 information. There's a lot of information in those reports.
 17 Q. Did you review journal vouchers?
 18 A. I'm not sure I did. I don't know. I don't remember.
 19 Q. Well, let's focus on this one, Defendant's Exhibit 484. Do
 14:34:48 20 you remember Dr. Angel testifying about this?
 21 A. I'm not sure. I don't remember what his particular
 22 testimony was on this document.
 23 Q. Well, refer to page three, please.
 24 MR. WARSHAWSKY: And you're going to have to really
 14:35:10 25 blow this up. Why don't you blow up the top half first?

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1 We used that information. If there's more, happy to use it.
 2 Q. So in any event, here you overstated Osage revenues in your
 3 model. Right?
 4 A. It would be -- yes, they would be higher.
 14:36:41 5 Q. And that was -- from 1889, you wouldn't be able to estimate
 6 how much interest you've imputed based on your benefit analysis?
 7 A. Well, this number could be put into the model and it could
 8 be rattled through and it would see what the answer was. It
 9 would be a very quick calculation if you pulled the spreadsheet.
 14:37:01 10 Q. Do you remember testifying regarding Plaintiffs' 183? We
 11 don't have to pull it up unless you want. But that was the
 12 Osage Nation motion, the motion that was filed by the government
 13 in the Osage Nation?
 14 A. Yes. Yes.
 14:37:13 15 Q. How did you become aware of that brief?
 16 A. That is something that was provided to me by counsel.
 17 Q. And what were you told when you were provided that brief?
 18 A. That here's a brief that was filed in a different matter by
 19 the government, and there was information about Osage in it.
 14:37:29 20 Q. Were you given any instructions on how to utilize what was
 21 on page 39?
 22 A. I don't believe we were given any instructions. They were
 23 saying, here, this is something you may want to consider in your
 24 analysis. So we saw that, so we lowered the Osage number.
 14:37:44 25 Q. Now let's go back to the Osage worksheet that was up here

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1 before that's within Plaintiffs' 189-A. In Column E, you see
 2 you've referred to DX-372, Osage data?
 3 A. That is correct.
 4 Q. What did you mean by that caption?
 5 A. I believe that is the number that was used by Ms. Herman of
 6 what her calculation is of what the fraction of the Osage
 7 annuity went into the IIM Trust.
 8 Q. I mean, you referred to that as being an estimate, didn't
 9 you?
 10 A. Yes.
 11 Q. I want to walk through one example with you to see if I
 12 understand how you utilized it.
 13 MR. WARSHAWSKY: If you'll pull up Defendant's
 14 Exhibit 517.
 15 BY MR. WARSHAWSKY:
 16 Q. And I'll tell you, this is a spreadsheet I prepared, and I'm
 17 going to try to go to the DX-372 numbers to see how they tie
 18 into this and see if that's consistent with your understanding
 19 of how Ms. Herman prepared these numbers.
 20 DX-372, let's start with -- we're working with pages
 21 2025 to 2054.
 22 MR. WARSHAWSKY: If I may, Your Honor, it's a 30-page
 23 document, if I might provide it to the witness so we can just
 24 move through it quicker.
 25 THE COURT: Fine.

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1 A. I don't know the accounting and the specifics of these
 2 documents. My understanding of the Osage annuity is that it was
 3 transferred in for the individuals and would be going to the IIM
 4 Trust. I'm not sure exactly the steps it got to get there.
 5 Q. You don't know why this is indicating coming out of Tribal?
 6 A. That's correct, I do not know.
 7 Q. Let's go to 2028 and 2029. Have you reviewed these pages
 8 before, these types of pages?
 9 A. Again, if they were in the backup binder I've probably seen
 10 them but I couldn't cite to any specific information or
 11 understanding of them.
 12 Q. And I understand. I'm not asking you to memorize everything
 13 in the binders, but I want to get your understanding of what a
 14 document like this -- how you would understand this document to
 15 be used.
 16 Do you see at the top of 2028 where it's referred to as
 17 a Tribal nonscheduled check request?
 18 A. 2028?
 19 Q. We've got it highlighted on the screen if that helps.
 20 A. Oh, I'm sorry. Yes, thank you.
 21 Q. Do you have an understanding of what was meant by that?
 22 A. No.
 23 Q. Below it it says account PL 7386706. Do you know what that
 24 is?
 25 A. No.

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1 BY MR. WARSHAWSKY:
 2 Q. Dr. Palmer, do you recognize the pages I've handed to you?
 3 I understand you may not recognize the specific pages, but do
 4 you recognize these types of documents from reviewing DX-372?
 5 A. They don't seem familiar. I may have reviewed something
 6 similar to it, but they don't...
 7 Q. Let's go through it and see if it refreshes your
 8 recollection. Because you referred to DX-372 in your schedule.
 9 A. Yes, I did. I don't believe these were in 372.
 10 Q. I beg your pardon?
 11 A. I don't believe these were in 372, were they?
 12 Q. Yes, they were.
 13 A. Oh, I'm sorry. Yes, these are the backup of the other four
 14 binders and not in the first binder.
 15 Q. Did you not review the backup to the first binder?
 16 A. I had looked at some of the documents but I confess to not
 17 going through all the documents in the backup binders, in all
 18 four backup binders.
 19 Q. Let's look at 2026 to 2029. Have you ever seen these
 20 documents before?
 21 A. Again, they look like they were some of the ones in the four
 22 backup binders, but I did not focus on those.
 23 Q. Well, do you have any understanding, looking on 2026, and
 24 we'll have it highlighted here, of why under the Tribal column
 25 you've got a dollar amount indicated, 3,152,632.55?

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1 Q. And you saw -- it says paid principal, that 3,152,632.55.
 2 That's the same amount that we saw on the previous page?
 3 A. Yes, it is.
 4 Q. Okay. And let's go to the next page, 2029. Have you seen a
 5 document like this before? You can look at the entire page if
 6 it helps.
 7 A. Same answer as I've been giving about the others.
 8 Q. So you see it's showing a disbursement out of that
 9 PL 7386706?
 10 A. Yes, I see that.
 11 Q. And a collection going into a couple of items with a 6039
 12 number that's been highlighted. Do you see that?
 13 A. I do.
 14 Q. Do you have an understanding what the 6039 refers to?
 15 A. My understanding is the 6039 is the individual account.
 16 Q. You're talking about the IIM account. Right?
 17 A. Yes.
 18 Q. And indeed, if you look at the description down below, it
 19 says to transfer funds for the December 2000 quarterly payments
 20 into various individual accounts at the Osage Agency. That's
 21 consistent with what you just said. Right?
 22 A. Yes.
 23 Q. Let's look at the next page. We've got another amount
 24 coming out of Tribal. Do you see that?
 25 A. I do.

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1 Q. That's \$2,419,814.14. Go to the next page. And you see
 2 we've got another one of these check requests?
 3 A. That's correct.
 4 Q. Tribal nonscheduled check request, again coming out of the
 14:44:52 5 same account, PL 7386706, and the same amount we were talking
 6 about, \$2.4 million?
 7 A. Yes.
 8 Q. And do you see below where it says payees, various
 9 annuitants?
 14:45:05 10 A. Yes, I see that.
 11 Q. Do you know what that refers to?
 12 A. No.
 13 Q. And if we move forward two pages to 2033, again it shows
 14 payees, various annuitants.
 14:45:17 15 A. Yes, it does.
 16 Q. It doesn't say anything about the IIM Trust, does it?
 17 A. It does not.
 18 Q. And you didn't see anything referencing the 6039 account
 19 here, did you, with respect to those last three pages that we
 14:45:32 20 were talking about?
 21 A. Oh, I'm sorry.
 22 Q. No, that's fine.
 23 A. In the last three pages...
 24 Q. Referring to 2030 through 2033. Actually, it's four pages.
 14:46:21 25 A. I do not see the number 6039 on any of the pages that you've
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1 two amounts that you've just shown me, though. You've shown me
 2 different things with one amount going -- two different amounts
 3 but there's nothing that links the two for this same period.
 4 Q. Oh. Well, let's look at the batch date on page 2026. And
 14:48:12 5 you can look at the dates at the bottom of 2028. There's a date
 6 prepared, 11/29/00. Do you see that? And on 2029, you see the
 7 effective date on this at the top?
 8 A. Well, if I'm looking at 2026 and comparing it with 2030,
 9 both of those seem to be very similar, and yet you had them in
 10 different columns.
 11 So I'm not sure -- both of them were Tribal to IIM, yet
 12 you have one, a payment to 6039, and the other is a payment to
 13 annuitants.
 14 Q. I see the confusion. Where do you see the second payment as
 14:48:57 15 being a payment to IIM? I'm talking about 2030 to 2033.
 16 A. I was looking at the columns on 2026 and 2030. There's
 17 two -- there's a column from Tribal -- column to IIM. I just
 18 looked at these two, that those seem to be the same, and yet you
 19 had them treated differently on your 517. So I'm trying to
 14:49:17 20 understand --
 21 Q. Where do you see 2030 -- I'm sorry, where do you see it
 22 being IIM money on 2030?
 23 A. What's the -- oh, I'm sorry, I must be reading this wrong.
 24 So that number below is not under IIM, that's the total, so it's
 14:49:37 25 a separate thing?
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1 directed me to.
 2 Q. And you didn't see any reference to individual Indians
 3 there, right, on those four pages?
 4 A. I don't see the term individual on any of these pages
 14:46:46 5 either.
 6 Q. By the way, on 2031 you saw, next to that account number PL
 7 7386706, you saw the account name was Osage Tribe. Right?
 8 A. That is correct.
 9 Q. Does that give you any additional information as to what
 14:47:02 10 that account might refer to?
 11 A. No.
 12 Q. In any event --
 13 MR. WARSHAWSKY: If you'll put that back up, 571, was
 14 it? No, I'm sorry, I'm talking about the spreadsheet that I
 14:47:19 15 prepared.
 16 BY MR. WARSHAWSKY:
 17 Q. Do you see for this first payment here what I've done is
 18 I've taken the 3.152 figure that we saw for the individuals.
 19 A. Yes.
 14:47:31 20 Q. And I put it under payment to 6039?
 21 A. Yes.
 22 Q. And that second amount that we saw, the payment to the
 23 annuitants, I put this under the second column, the 2.4 million
 24 figure.
 14:47:44 25 A. I don't know that there was a link established between the
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1 Q. Right. Right.
 2 A. So they're both -- these pages are both debits out of the
 3 Tribal account?
 4 Q. That's what they appear to be.
 14:49:46 5 A. Okay.
 6 Q. One, remember we looked at the check request, one was
 7 payments to 6039, and that's the amount on my spreadsheet that I
 8 show under 6039.
 9 A. Well, there isn't a page -- the 2033 that you had pointed
 14:50:27 10 out, to various annuitants, there's not a similar page for the
 11 previous amount, for the 3,152.
 12 Q. Why don't you look at 2029.
 13 A. Okay. (Witness complies.)
 14 Q. They're a little different, aren't they?
 14:51:03 15 A. Yes.
 16 Q. And if you look at the top right-hand corner of 2029, do you
 17 see the document number there?
 18 A. Yes.
 19 Q. Do you see the first two letters are BB?
 14:51:13 20 A. I do.
 21 Q. Do you know what that means?
 22 A. BB I believe were transfers.
 23 Q. Are these actual check disbursements? Do you understand
 24 that checks were cut for the BB transfers?
 14:51:29 25 A. I do not know.
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1 Q. If in fact BB transfers are not checks, they wouldn't have
 2 been captured in the CP&R data. Right?
 3 A. If they're not checks, the answer is no.
 4 Q. They would not be in the CP&R data?
 5 A. That's correct.
 6 Q. And your analysis wouldn't have picked those transfers up,
 7 would they?
 8 A. I don't know if the transfers would have been picked up in
 9 the receipts or in the expenditures. What I have in the CP&R
 10 and EFT are funds that went out of the Trust.
 11 Q. Well, let me just try to get through these relatively
 12 quickly. I understand that these documents apparently aren't
 13 ones that you're particularly familiar with. But if we were to
 14 go through the next three quarterly payments within this fiscal
 15 year, if we go to -- let's go to 2037, please. And you see once
 16 again here we've got 3,008,161 paid again to the 6039 accounts?
 17 A. Yes.
 18 Q. And going forward to 2039, here you see we've got roughly
 19 \$2.26 million being paid to various annuitants?
 20 A. Yes.
 21 Q. And you see how I've put those two amounts, one that are
 22 payments to 6039, and one that are payments to annuitants?
 23 A. Yes, I see that.
 24 Q. And I'll save everybody. We could go through the next two
 25 payments, and if Mr. Gingold wants, I'm sure he can cover it on

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1 A. That is correct. We pulled the government's numbers and
 2 this 12.04 is what we've come up with.
 3 Q. I just want to review one other, and I'll be quick with this
 4 one, one other document from DX-372, pages 2005 to 2011, please.
 5 And have you seen this document before, Dr. Palmer?
 6 A. These are very similar to the ones you just showed me, I
 7 believe.
 8 Q. In fact, this is a document that was attached to the
 9 government's brief filed in April. Do you remember that?
 10 A. No, I do not.
 11 Q. Referring -- so you didn't review this when it was attached
 12 to the government's April brief. Is that correct?
 13 A. I reviewed the brief but I don't know that I reviewed all
 14 the attachments.
 15 Q. And referring to page 2007, do you see in the description
 16 here once again an explanation of the 0611, subcategory of 6039,
 17 payments to IIM accounts, estates, guardianships, minors, and
 18 whereabouts unknown?
 19 A. That's what it says.
 20 Q. And then moving forward to 2011, again up in the top you see
 21 the payees, "various annuitants"?
 22 A. I see that.
 23 MR. WARSHAWSKY: And if you can show the top of that,
 24 please.
 25 BY MR. WARSHAWSKY:

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1 redirect; I did the same thing for the remaining two quarterly
 2 payments in fiscal year 2001, and you see I came up with a total
 3 payment to 6039 of 12,037,147?
 4 A. Yes, I see that.
 5 Q. And if we go to your Attachment C, this is on Exhibit 189-A,
 6 Attachment C -- I'm sorry, Attachment A, Column C.
 7 MR. WARSHAWSKY: And go down to fiscal 2001. I hope
 8 everybody remembers at this point.
 9 BY MR. WARSHAWSKY:
 10 Q. Column C, do you see the 12.04?
 11 A. Yes, I do.
 12 Q. That's what you've indicated is the government calculated
 13 figure for Osage?
 14 A. That's correct.
 15 Q. In fact, that was based on the documents within DX-372.
 16 Right?
 17 A. For the years you've shown here. There are many years there
 18 were not information that Ms. Herman estimated, so that this is
 19 the Osage government calculated column, yes -- referring back to
 20 your question, your question to me earlier was, was it
 21 estimated, and yeah, I called it estimated.
 22 Q. Certainly wasn't for the fiscal year 2001 we just went
 23 through. Right?
 24 A. There was a calculation here that you've just gone through.
 25 Q. Which ties in to your spreadsheet?

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1 Q. Do you know what a public voucher means, what it means when
 2 a document is called a public voucher?
 3 A. I can't say the precise definition, no.
 4 Q. Do you have an understanding as to whether a check is issued
 5 when a public voucher is created?
 6 A. I'm not sure.
 7 Q. Or in this case perhaps many checks?
 8 A. I don't know.
 9 Q. But you did know back when we were talking about 2007, for
 10 example?
 11 MR. WARSHAWSKY: Go back to page 2007.
 12 BY MR. WARSHAWSKY:
 13 Q. You did recognize that this was different than the public
 14 voucher document that we were talking about earlier. Right?
 15 A. The title of it is an intrabureau cash transaction.
 16 Q. And if you look at the document number on this one, again
 17 the leader on it is a BB. Do you see that?
 18 A. Yes, I do.
 19 Q. And this is a disbursement from PL 7386706, and we've
 20 established, have we not, that that's a payment from Osage Tribe
 21 account?
 22 A. I believe you showed me something earlier in the previous
 23 set of documents. I don't know the Osage Tribal account number,
 24 so...
 25 Q. Okay. But this was a disbursement --

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1 MR. WARSHAWSKY: Would you go to the first page on
 2 this, please? Yeah, here we are. Go to the top of page 2005.
 3 A. Yes.
 4 BY MR. WARSHAWSKY:
 14:59:36 5 Q. Does that refresh your recollection as to what that
 6 particular account refers to?
 7 A. That's what it says.
 8 Q. This is a payment, go to 2007, this is a disbursement from
 9 the Osage Tribe account into the 6039, the IIM account. Right?
 14:59:59 10 A. Yes.
 11 Q. And then move forward to 2008. This was also a payment out
 12 of the Osage Tribe account?
 13 MR. WARSHAWSKY: Blow it up here.
 14 BY MR. WARSHAWSKY:
 15:00:16 15 Q. Do you see that?
 16 A. I do.
 17 Q. And then if we go -- and you see down under the payees,
 18 various annuitants?
 19 A. Yes.
 15:00:24 20 Q. And there's nothing on this document or the next page, 2009,
 21 that refers to the IIM Trust accounts. Right?
 22 A. IIM is not anywhere on this document and the following page,
 23 that's correct.
 24 Q. Now, I believe based on your testimony this morning, since
 15:00:46 25 you've included as revenues within your collections number all
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1 Exhibit 189-A, the first page, Attachment A.
 2 A. Okay.
 3 Q. And actually, I don't know which page we're on, but we're
 4 actually on a good page. Let's look at that line. We're
 15:02:36 5 talking about fiscal year 2001. We saw the 12.04 million figure
 6 which we got by going through the DX-372 documents.
 7 A. That is correct.
 8 Q. But you've got a \$23.6 million figure there next to it.
 9 Right?
 15:02:54 10 A. That is correct.
 11 Q. And what does that figure represent?
 12 A. The 23.6 would be the value of the Osage annuity less the
 13 1.25 percent that goes to the tribe.
 14 Q. That's basically your per share amount times 2,229 shares,
 15:03:13 15 reduced by the 1.25 percent. Right?
 16 A. Yes.
 17 Q. And this is your collections amount. Right?
 18 MR. GINGOLD: Objection, Your Honor. This is not the
 19 same document we provided to defendants. We have a total of
 15:03:32 20 4,685,121 in our document. There's a different number on this
 21 document.
 22 MR. WARSHAWSKY: I'm sorry, it's supposed to be
 23 Plaintiffs' Exhibit 189 -A from this morning.
 24 MR. GINGOLD: It's not the same document.
 15:03:49 25 MR. WARSHAWSKY: We'll get there.
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1 Osage headright payments, I mean, you've basically taken the
 2 number of shares, total number of shares times the per share
 3 amount. Right?
 4 A. That is correct.
 15:01:01 5 Q. You haven't distinguished the amount that went to IIM
 6 accounts from amounts that went directly to annuitants?
 7 A. Depending on if the disbursements were made through the IIM
 8 account, then we would take account to -- when we have CP&R and
 9 electronic transfers, if they're electronic transfers that were
 15:01:23 10 made to Osage individuals, headright owners, we would capture
 11 those payments.
 12 Q. My question, Dr. Palmer, is you're showing disbursements.
 13 These were two disbursements coming out of the Osage Tribe
 14 account for the Osage annuity payment.
 15:01:39 15 A. Okay.
 16 Q. The headright payment. Part of which went into IIM
 17 accounts, part of which were paid directly to various
 18 annuitants.
 19 A. Okay.
 15:01:49 20 Q. And your analysis doesn't distinguish those two groups of
 21 payees, does it?
 22 A. In terms of -- to reiterate, in terms of disbursements, we
 23 take into account all of the checks and electronic funds
 24 transfers that come out of the IIM account.
 15:02:07 25 Q. Let's pull up -- I'm sorry, let's pull up Plaintiffs'
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1 BY MR. WARSHAWSKY:
 2 Q. Okay. There we are. We've had our own technical
 3 difficulties here. We're back.
 4 2001, you see there's the 12.04 million figure that we
 15:04:02 5 talked about from DX-372?
 6 A. Yes.
 7 Q. And you've taken that out of collections. Right?
 8 A. That's correct.
 9 Q. And next to it you've got your \$23.62 million figure.
 15:04:14 10 Right?
 11 A. That's correct.
 12 Q. And that was the 98.75 percent of 2,229 shares times the per
 13 share amount. Right?
 14 A. Right.
 15:04:23 15 Q. And you've added that into collections. Right?
 16 A. That's correct.
 17 Q. So your collections figure includes all collections -- I
 18 mean, all Osage headright revenues. Right?
 19 A. That is correct.
 15:04:34 20 Q. Reduced by the 1.25 percent?
 21 A. Yes.
 22 THE COURT: Can I stop just a minute and clear up a
 23 little problem I had this morning. There's discussion on
 24 1.25 percent and then there's discussion of 1.25 headrights. I
 15:04:53 25 don't know whether we're dealing with percentages or headrights,
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1 because 1.25 headrights is a lot less than 1.25 percent of
 2 2,229. So which is it?
 3 THE WITNESS: Do we have the document from this
 4 morning?
 5 THE COURT: Well, you were shown a document that spoke
 6 in terms of one-and-a-quarter headrights.
 7 THE WITNESS: Then we took out too much.
 8 THE COURT: And you've been talking about
 9 one-and-a-quarter percent.
 10 THE WITNESS: Then we took out too much.
 11 THE COURT: It's a small number, but I don't know which
 12 one is which.
 13 MR. WARSHAWSKY: Yeah, that was -- if we could put it
 14 up, please.
 15 BY MR. WARSHAWSKY:
 16 Q. This is Plaintiffs' 183, the Osage Nation brief.
 17 A. If we could pull it up, we could look at it if it's
 18 possible.
 19 MR. WARSHAWSKY: Matthew is working at it right now.
 20 Here we are.
 21 And do you remember what page we were on? 38 or 39.
 22 THE WITNESS: Your Honor, you're correct. We pulled
 23 out too much.
 24 THE COURT: So you pulled out too much. So that's
 25 actually a difference that favors the plaintiffs. Okay.

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1 through the IIM Trust. Is that correct?"
 2 Answer: "The way you've defined it, that sounds like
 3 that's correct. Yes."
 4 Question: "And if in fact you've included those types
 5 of revenues in the Osage corrected amounts in Column D, would
 6 you agree that those amounts should come out of the
 7 calculation?"
 8 Answer: "If the amounts never flowed into the IIM
 9 Trust, then they should not be in my calculation."
 10 That's basically the scenario that we've just gone
 11 through with some of these documents. Right?
 12 A. And I would agree with that.
 13 Q. So if in fact the money doesn't go into the IIM Trust, if
 14 the payments are made directly to the annuitants from the tribal
 15 account, it shouldn't go in your calculation?
 16 A. That's correct.
 17 Q. I asked Dr. Cornell, Professor Cornell further, and we can
 18 pull up 334, lines 24 to 21 of the next page, 334, 335. I asked
 19 Professor Cornell if he could quantify the impact of his
 20 including this. And you can actually see it -- unfortunately
 21 we'll have to jig over here, but it's the question at the bottom
 22 of 24 on 334.
 23 "Have you ever done a calculation to get a sense as to
 24 how much of the \$58 billion that you showed us, your bottom, how
 25 much of that is attributable to the difference between the use

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1 THE WITNESS: It favors the defendants.
 2 THE COURT: All right. It's adjustable. Now I
 3 understand.
 4 BY MR. WARSHAWSKY:
 5 Q. I would like to -- you were present, of course, for
 6 Professor Cornell's testimony.
 7 A. I was not.
 8 Q. Oh, you were not?
 9 A. No.
 10 MR. WARSHAWSKY: Would you pull up page 334? This is
 11 from the June 10, 2008 afternoon testimony of Doctor -- or
 12 Professor Cornell.
 13 BY MR. WARSHAWSKY:
 14 Q. If you read through this question and answer that I
 15 presented to him, it said, Question: "And so you, for
 16 example -- let me just give you a different view on Osage as a
 17 hypothetical. Assume that revenues from the Osage lands go into
 18 a tribal account, not an individual account."
 19 "Yes."
 20 Question: "And monies from that tribal account are
 21 disbursed directly to individuals, not to a trust account, but
 22 to individuals who have what are called headright interests.
 23 Are you with me?"
 24 Answer: "Yes."
 25 Question: "In that case those monies would not flow

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1 of Column D versus the use of the government's Osage
 2 calculation?"
 3 Answer: "I haven't, but if we went to the bottom maybe
 4 we can see."
 5 And if you read on down to line 21, I don't want to
 6 make people listen to this, but getting down to the bottom, he
 7 gets to, his bottom line is about 11-plus billion dollars on
 8 line 20 of page 335. Do you see that?
 9 A. Yes, I do.
 10 Q. Can you make an estimate sitting here today, if in fact what
 11 you've calculated as being in Column D, if that's really not
 12 properly part of the IIM system, if it really is the
 13 government's calculation --
 14 MR. GINGOLD: Objection, Your Honor. Calls for a legal
 15 conclusion. This Court hasn't ruled on that issue.
 16 THE COURT: Overruled.
 17 BY MR. WARSHAWSKY:
 18 Q. Dr. Palmer, I'm asking you to make the same calculation your
 19 colleague made a few weeks ago.
 20 A. You know, again, hypothetically, I don't know what kind of
 21 went into the Trust, what goes out of the Trust. As best we can
 22 identify, if indeed your hypothetical is correct, it's probably
 23 the same order of magnitude.
 24 Q. Let's go to -- refer to Plaintiffs' Exhibit 189-A. And
 25 footnote one, you see down at the bottom, one of your lines says

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1 Morgan Angel exhibit receipts are adjusted to account for
 2 acknowledged understatement of revenues using 77 percent cited
 3 in DX-365.
 4 You testified a little bit about that this morning?
 15:11:03 5 A. Yes.
 6 Q. When did you first become aware of Defendant's Exhibit 365?
 7 A. When I read, I think it was the Judge's opinion of
 8 January 30th, he had cited that document.
 9 Q. And who made the decision to utilize DX-365's figure to make
 15:11:22 10 the adjustment on this page?
 11 A. I did.
 12 MR. WARSHAWSKY: Would you pull up Defendant's
 13 Exhibit 365.
 14 BY MR. WARSHAWSKY:
 15:11:31 15 Q. Dr. Palmer, what's your understanding of why this document
 16 was created?
 17 A. This document was created, I think as part of an analysis
 18 the defendants were doing. The part that I would utilize is at
 19 the bottom, the footnote that says estimated credits into the
 15:12:10 20 IIM accounts, the IIM accounts is currently estimated at
 21 77 percent of total collections.
 22 Q. Well, up at the top, let's focus on the top, it says, proven
 23 coverage 1909 to 2006 in dollars, millions, do you see that?
 24 A. I do.
 15:12:30 25 Q. What was meant by that?
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1 Q. And then the next column, total proven coverage, do you know
 2 what that refers to?
 3 A. No.
 4 Q. And that's the caption of this document, by the way, "Proven
 15:14:18 5 Coverage." Right?
 6 A. That is correct.
 7 Q. Don't you think it's important to know why the document was
 8 made before you choose the 77 percent figure at the bottom?
 9 A. The revenues were said to be understated. This was a
 15:14:34 10 document that gave a number of an estimate of 77 percent. It
 11 was a number that we used. If we had the actual amount of
 12 understatement, if we knew the amount that had gone into the
 13 general Treasury fund, we would have used that as the number.
 14 Since we didn't, this provided an estimate.
 15:14:52 15 Q. Are you saying that this document stated revenues were
 16 understated?
 17 A. If you go to the bottom of the document and see what it
 18 says, that's what it said, that the credits into the accounts
 19 was a fraction of collections. It was an estimate.
 15:15:09 20 Q. How did you interpret that to be a statement that revenues
 21 were understated?
 22 A. Well, this was credits into the account, so what the
 23 accounts are credited as.
 24 Q. Now, you've sat through a lot of this trial. I understand
 15:15:21 25 you weren't here for everything, but you've listened to a lot of
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1 A. Again, I believe this was part of an analysis done, there
 2 were several pages to this document where they assumed different
 3 amounts credited and then looked at the effect over time, and
 4 that footnote is on every page of the document.
 15:12:50 5 Q. I understand you used the 77 percent from the footnote, but
 6 my question is, do you understand what was meant by the
 7 reference to proven coverage?
 8 A. Again, my understanding was this was a document prepared as
 9 part of the reconciliation that was being done.
 15:13:08 10 Q. And I'm just trying to understand why you considered the
 11 77 percent figure as relevant to your analysis. Looking in the
 12 third column, there's a caption, proven by transaction
 13 reconciliation testing and interest recalculation. Do you see
 14 that?
 15:13:26 15 A. Yes.
 16 Q. What did that refer to?
 17 A. I know no more than it says there.
 18 Q. And the next column says proven by DCV only. What did that
 19 refer to?
 15:13:43 20 A. Again, I know no more than it says there.
 21 Q. What was the DCV?
 22 A. I think the V stands for verification. I don't remember
 23 what the D and the C were.
 24 Q. Did you ever review any of the DCV materials in this case?
 15:14:00 25 A. I had seen some materials early on. I'm not exactly sure.
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1 it. Right?
 2 A. Yes.
 3 Q. And you've heard testimony about the notion that money --
 4 that collections coming into the IIM system may in fact not
 15:15:38 5 be -- the ultimate destination may not be an IIM account.
 6 Right?
 7 A. If funds go into the IIM Trust, then they are for IIM
 8 accounts. That's the reason they go into the Trust.
 9 Q. You haven't distinguished between IIM accounts and the IIM
 15:15:56 10 system in your analysis. Right?
 11 A. My understanding of IIM system is something that Michelle
 12 Herman had talked about, but this talks about credits into IIM
 13 accounts of collections, so I was focusing on the IIM Trust and
 14 the IIM accounts here.
 15:16:12 15 Q. You referred to Ms. Herman's testimony. You were here for
 16 all of it?
 17 A. I believe I was.
 18 Q. And you remember that big chart that she had on an easel
 19 over here, I forget, Defendants', what was it, 371 --
 15:16:28 20 Defendants' 370, the big easel?
 21 A. Yes, I remember the chart.
 22 Q. And do you remember when she was talking about money coming
 23 into the IIM system ultimately going to, for example, to tribal
 24 accounts and not going to IIM accounts?
 15:16:41 25 A. I remember that she was asked if she could identify, given
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1 even the 2007 data, most current data, what went to her
 2 construction of what an IIM account was versus others, and she
 3 couldn't. She said she hadn't been asked to.
 4 So she couldn't identify the distinction between that.
 15:17:00 5 So I'm not sure how that relates to this.
 6 Q. Well, I understand you remember that, but my question was,
 7 do you remember her talking about money coming into the
 8 IIM system and going to tribes, for example?
 9 A. I'm not sure I'm really familiar with the IIM system. It's
 15:17:17 10 something that defendants, that Michelle Herman had talked
 11 about. Here we're talking about credits into IIM accounts and
 12 total collections. There's no IIM system that I understand
 13 here.
 14 Q. Well, if you understand -- I'll ask you to assume that
 15:17:34 15 Defendant's Exhibit 365, total collections as referenced in the
 16 note that you've been talking about, that that refers to
 17 collections into the IIM system. Would that change your
 18 understanding that this was a statement that revenues were
 19 understated?
 15:17:53 20 A. As I mentioned earlier this morning, if we had the correct
 21 information we would have used it, as -- revenues were
 22 understated was the testimony, therefore we needed an estimate
 23 for those. Once I applied this estimate for that, the
 24 disbursement rates for those time periods, given the ratios that
 15:18:12 25 we had looked at from time periods when we had reported
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1 information, seemed reasonable. So this seemed like a
 2 reasonable estimate for those time periods as well.
 3 Q. Well, is it fair to say that your use of 77 percent from
 4 this document is contingent upon this document standing for the
 15:18:30 5 proposition that revenues are understated?
 6 A. This document gave an estimate. We used that estimate. We
 7 needed some basis. If this estimate is incorrect, then we would
 8 use a different estimate. But we tried to use an estimate of
 9 understated revenues, and this is something that defendants had
 15:18:49 10 provided, so we used it.
 11 Q. And if you misunderstood the purpose of this document, you
 12 would agree that your use of the 77 percent in your model was
 13 incorrect?
 14 A. The 77 percent could still be correct. Again, once I looked
 15:19:02 15 at the ratio of the disbursement rate during the period, then it
 16 seemed like a reasonable thing to do. So we went through this
 17 number. This was a number we used here. Is it 76? Is it 80?
 18 I don't know exactly precisely. Here was an estimate based on
 19 this document, and so we used it.
 15:19:21 20 Q. Now, you've expressed I believe some concerns, and certainly
 21 there are concerns reflected in your model regarding the years
 22 1923 to 1949. Correct?
 23 A. Those are the years that -- the information from Dr. Angel
 24 that he provided at the trial.
 15:19:37 25 Q. And you were concerned that collections were understated in
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1 those years?
 2 A. He had testified to that, and also on Michelle Herman's
 3 exhibit there was a comment about revenues being understated.
 4 Q. And I just want to understand what your opinions are right
 15:19:52 5 now. You have an opinion that those years are understated. Is
 6 that correct?
 7 A. I relied upon the information that they provided. I did not
 8 do the specific research for those years. They had testified to
 9 it, so I used that information.
 15:20:05 10 Again, the purpose that we tried to incorporate as much
 11 of the information and knowledge from the trial as we could.
 12 Q. You just mentioned Dr. Angel's testimony. Did you have an
 13 understanding, when Dr. Angel testified about understatement of
 14 collections in those years, whether he was also talking about an
 15:20:26 15 understatement of disbursements?
 16 A. He specifically made reference to revenues, he did not make
 17 any reference to disbursements, I believe.
 18 Q. Well, let's pull up Dr. Angel's testimony, pages 791, 792.
 19 This is from the afternoon of June 17th. We'll start at the
 15:20:48 20 bottom, at line 24 on 791. Do you see that, sir?
 21 And Dr. Angel, knowing the relatively limited amount of
 22 new information you've added since October, what then in your
 23 opinion is the relevance of your total IIM chart for this
 24 particular remedies trial?
 15:21:12 25 And you're reading on, sir, in the next answer: Well,
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1 it's multiple. First of all, we were able to gather some
 2 receipt and disbursement information, but the receipt and
 3 disbursement information we were able to gather clearly is
 4 limited. It's limited in the number of years that's presented,
 15:21:31 5 and certainly it's limited in the scope of what's presented.
 6 This is not all receipts and all disbursements. It gave us an
 7 additional number to work with. I certainly hoped, as I added
 8 it to the IIM table, that it would be beneficial to
 9 statisticians and modelers, as long as they understood the
 15:21:51 10 limitations of the data.
 11 Do you remember that testimony, sir?
 12 A. Yes.
 13 Q. And in that testimony he was talking about both receipts and
 14 disbursements being understated. Right?
 15:21:59 15 A. Yes, he did.
 16 Q. But you haven't adjusted disbursements similar to your
 17 adjustment to collections, have you?
 18 A. We did not. Again, I looked at the ratio once we made the
 19 adjustment, and it seemed to be in the reasonable range of what
 15:22:14 20 disbursements we have had in other periods, so we had adjusted
 21 just the disbursements -- I'm sorry, just the revenues.
 22 If the adjustment rate we used for revenues was
 23 incorrect, and that they both should be adjusted up, there may
 24 be a different factor, but this is what we used.
 15:22:30 25 Q. In fact, if they're both understated by roughly the same
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1 amount, it doesn't affect the bottom line, the account balance
 2 at September 30, 2007. Right?
 3 A. It would affect it, actually, in the calculation.
 4 Q. How so, if receipts and disbursements are understated by the
 5 same amounts?
 6 A. Well, if there's a differential, and they're both higher by
 7 a certain amount in that differential, the dollar value will be
 8 different. So if you take two numbers and you inflate both
 9 numbers by the same percentage, if one's higher than the other,
 10 as you get higher it's going to be a larger dollar amount.
 11 Also my understanding is the reason they were
 12 understated is because this was information from the disbursing
 13 officers and not the funds that were in Treasury. You're right,
 14 there was not any information about this, but generally I would
 15 think that the disbursing officers would have a pretty good hand
 16 in monies that were disbursed, monies in Treasury would be in
 17 Treasury potentially being held. In that case you would have no
 18 more or fewer disbursements out of Treasury than from the
 19 disbursing agent. So it seemed reasonable to adjust the
 20 revenues and not the disbursements.
 21 Q. So you've adjusted collections upward but left disbursements
 22 where they are. Right?
 23 A. That is correct.
 24 Q. And you listened to Dr. Scheuren's testimony as well.
 25 Right?

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1 disbursements and revenues. I did not assume the relationship.
 2 Q. Very good, Dr. Palmer. My question, though, because you
 3 talked about regression, was: You didn't utilize a regression
 4 technique in your analysis, did you?
 5 A. We did linear interpolation for estimation.
 6 Q. Which is not regression analysis. Right?
 7 A. It is a technique, it's not a regression technique. Again,
 8 Dr. Scheuren had said -- he confirmed it was a reasonable thing
 9 to do.
 10 Q. Okay. Thank you.
 11 Let's pull back up your spreadsheet, Attachment A.
 12 This is Plaintiffs' 189-A. And let's go to the collections
 13 page. I forget what the tabs are called. Your receipts
 14 analysis.
 15 Now, you recognize this as the receipts worksheet
 16 from -- yes, up in the upper left-hand corner, you see it says
 17 "6/23, Final Model"?
 18 A. Yes.
 19 Q. So we're working with the right one now. This is from the
 20 receipts worksheet to your document, the Excel spreadsheet that
 21 we got late last night. Right?
 22 A. That's correct.
 23 Q. And let's go to the years 1923 to 1949, and over in
 24 Column O, Excel spreadsheet Column O, is that where you applied
 25 the 77 percent figure?

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1 A. I did.
 2 Q. And do you remember his testimony about utilizing time
 3 series techniques to address uncertainty created by missing data
 4 for the values in these years?
 5 A. I did.
 6 Q. And do you remember or are you aware that for every year in
 7 the period of 1923 to 1949, the time series techniques utilized
 8 by NORC and Dr. Scheuren ended up increasing the collections
 9 figures?
 10 A. I do know that that was the result of his calculations. Of
 11 course those calculations were premised upon relationships of
 12 other years, so he has assumed a relationship between
 13 disbursements and collections for all years prior, so his
 14 estimation is going to continue that relationship during those
 15 years. If those years were differentially wrong or information
 16 in one was understated and the other was not, his estimation
 17 technique would force that to be the same relationship to hold
 18 for that time.
 19 So it really didn't address the problem. His time
 20 series technique was a smoothing process, it was not a
 21 regressive process. It's not going to adjust if one is
 22 differentially affected.
 23 Q. You didn't utilize a regressive process either, did you?
 24 A. I looked through Dr. Scheuren's process and the calculations
 25 that he did, and he assumed that relationship between

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1 A. That is the 77 percent figure, yes.
 2 Q. That's the one that you took from Defendant's Exhibit 365?
 3 A. That's -- the number we used was .77, and yes, that was from
 4 that exhibit.
 5 Q. The one with the little note at the bottom, 365. Right?
 6 A. Yes.
 7 Q. Okay.
 8 MR. WARSHAWSKY: And scroll over a little bit.
 9 BY MR. WARSHAWSKY:
 10 Q. So basically how did you use the 77 percent on this one?
 11 A. So as I testified about this morning, the revenues were
 12 inflated. So if they had been 77 percent of what they should
 13 have been, they were divided by .77, which would cause them to
 14 be inflated.
 15 Q. You increased the receipts by dividing the figures in
 16 Column M by .77?
 17 A. That is correct.
 18 Q. You didn't make --
 19 THE COURT: You don't mean inflated, you mean
 20 increased.
 21 THE WITNESS: Increased.
 22 THE COURT: Because inflated would suggest that they're
 23 higher than they should be, but you're taking the position that
 24 they should have been this high.
 25 THE WITNESS: Oh, okay. Thank you for that

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1 clarification. I was thinking that they were larger because of
 2 the factor.
 3 THE COURT: You divided the numbers in Column M by the
 4 percentage in Column O to get the number in Column P.
 15:28:35 5 THE WITNESS: That is correct. A mathematical
 6 calculation.
 7 BY MR. WARSHAWSKY:
 8 Q. And you didn't make a similar adjustment to receipts -- I'm
 9 sorry, to collections for this period of 1923 to 1949, even
 15:28:46 10 though Dr. Angel testified that both collections and -- let me
 11 say that again. I may have gotten it wrong there.
 12 You didn't make a similar adjustment to the
 13 disbursements data even though Dr. Angel testified that both
 14 collections and disbursements were understated in those years.
 15:29:05 15 Right?
 16 A. As we talked about earlier, because they were differential,
 17 that we had the information from --
 18 Q. Dr. Palmer, it's really a yes or no question.
 19 A. Well, then, my previous answer stands.
 15:29:16 20 Q. You did not make an adjustment to disbursements for those
 21 years?
 22 MR. GINGOLD: Objection, Your Honor. He misstated
 23 Dr. Angel's testimony.
 24 THE COURT: Well, then, I think he better say again
 15:29:26 25 what it was.

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1 MR. WARSHAWSKY: We can pull it up again if you would
 2 like.
 3 THE COURT: Are we going to stand by your previous
 4 testimony or are you going to clarify it for us, Doctor?
 15:29:37 5 THE WITNESS: My previous answer that I already gave I
 6 thought was adequate. But do you want me to answer it again?
 7 THE COURT: Let me hear it again. Everybody seems to
 8 know what it was but me.
 9 THE WITNESS: The answer was that we adjusted the
 15:29:51 10 revenues and not the disbursements. Dr. Angel had said that
 11 both may have been understated. The comment, though, the reason
 12 that the revenues and disbursements were understated is because
 13 we only have information from the account officers, the
 14 disbursing officers.
 15:30:08 15 So there were funds in Treasury, but what seemed
 16 reasonable is that things that were being disbursed would be
 17 disbursed through disbursing officers. Funds held in Treasury
 18 would not likely have the same disbursement rates because they
 19 wouldn't be going through a disbursing officer. So it seemed
 15:30:23 20 reasonable to adjust the revenues and not the disbursements.
 21 And as a sanity check to that, the disbursement rates, once they
 22 were adjusted, seemed reasonable.
 23 THE COURT: So the answer to Mr. Warshawsky's question
 24 is, no, you did not adjust the disbursements, although you did
 15:30:39 25 adjust the receipts, and then you give an explanation for it?

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1 THE WITNESS: That is correct.
 2 BY MR. WARSHAWSKY:
 3 Q. Thank you, Dr. Palmer. And I did a calculation with the
 4 spreadsheet. See if it sounds right to you. The impact on the
 15:30:52 5 nominal benefit to the government by increasing the receipts but
 6 not increasing the disbursements for those years, I calculated
 7 the difference to be \$169.9 million of increased revenue. Does
 8 that sound right to you?
 9 A. I don't know. If you say that was so, I haven't done it, I
 15:31:15 10 don't know.
 11 Q. If you would like, I could have Matthew do it on the
 12 spreadsheet, but...
 13 A. If you represent it --
 14 Q. Let's go ahead and do this --
 15:31:24 15 A. Fine.
 16 Q. -- and see if this looks right to you.
 17 THE COURT: This is dangerous stuff, Mr. Warshawsky.
 18 You're working with a live spreadsheet. I may ask you for a lot
 19 more calculations.
 15:31:39 20 MR. WARSHAWSKY: We practiced it. If you'd like, Your
 21 Honor, I may do it. No, he's not doing it right, actually. He
 22 did it a different way than I would have done it.
 23 BY MR. WARSHAWSKY:
 24 Q. But do you see what he's done here?
 15:32:00 25 A. I do.

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1 Q. I would have taken a sum of the two columns, but he's taken
 2 the difference for each individual item and then summed it at
 3 the bottom, 169.6 million?
 4 A. Okay.
 15:32:14 5 Q. And that's for the years 1923 to 1949?
 6 A. That's correct. Oh, wait -- oh, yes, yes.
 7 Q. And sitting here today, do you have any sense as to what the
 8 interest impact is on your benefit calculation, moving those
 9 years forward, if in fact you shouldn't have increased those
 15:32:32 10 amounts by 169.6 million?
 11 A. I do not know.
 12 Q. In the billions, do you think?
 13 A. I do not know.
 14 THE COURT: We're going to take a 10-minute break.
 15:42:35 15 (Recess taken at 3:32 p.m.)
 16 THE COURT: Before we continue here, we had talked
 17 about hearing some summaries, and I don't know about you-all,
 18 but it's beginning to be obvious to me that if we do that this
 19 afternoon it's going to be a bit rushed. And I wonder how we
 15:42:52 20 all feel about doing this tomorrow afternoon instead of this
 21 afternoon.
 22 MR. KIRSCHMAN: That's fine with us, Your Honor.
 23 MR. DORRIS: That would be great.
 24 THE COURT: All right, good.
 15:43:04 25 Go ahead, Mr. Warshawsky. Now you've got the rest of

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1 the afternoon.
 2 MR. DORRIS: Your Honor, I take that back.
 3 MR. WARSHAWSKY: Mr. Gingold is going to be doing
 4 redirect, so...
 15:43:18 5 BY MR. WARSHAWSKY:
 6 Q. Dr. Palmer, I wanted to turn -- but first of all, let me
 7 just address the question I think the Judge was asking as we
 8 were leaving. Dr. Palmer, if we -- you know, if you were to
 9 take your model and take the Osage -- your calculation of Osage,
 15:43:39 10 you know, the 98.75 percent calculation, take those numbers out
 11 of your collections figure and put back in the government
 12 calculated figure -- you're with me. Right?
 13 A. I'm listening.
 14 Q. And that would end up reducing your total revenues. Right?
 15:44:00 15 A. That's correct.
 16 Q. And when you did disbursement rate calculations, what impact
 17 would that have on your disbursement rate calculations?
 18 A. Let's see. For the 1909-1911 period it would not have any
 19 effect. That's actually, the change that you had mentioned
 15:44:28 20 earlier today about the spreadsheet that was given to you last
 21 night -- I'm answering the question, but I'm saying is it would
 22 not affect the disbursement rate we used for that period.
 23 I'm saying that the previous version that was
 24 originally given to you on Saturday night, Sunday morning, that
 15:44:45 25 had in there the Osage adjustment to the revenue. When I looked
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1 the fourth page.
 2 If you want to go ahead and highlight the section down
 3 where we have the revenue and the collections and disbursements
 4 numbers.
 15:46:42 5 Now, in your analysis you used the collections figure
 6 of 66.8 million. Right?
 7 A. 66 point -- yes.
 8 Q. And if it assists you, we can jump to Plaintiffs'
 9 Exhibit 189-A real quickly. And this would actually go I think
 15:47:18 10 into your -- you have to help me here. Yes, it's actually in
 11 your collections analysis. It's not Attachment -- it's the
 12 collections analysis within Attachment A.
 13 MR. WARSHAWSKY: Your Honor, if it's okay with you and
 14 it's okay with the plaintiffs, we received this as an Excel
 15:47:52 15 spreadsheet, I mean, the Excel document, all of the attachments
 16 in one. It would be easier working with that than
 17 Plaintiffs' 189-A that we received this morning.
 18 MR. GINGOLD: Do you know whether it's been modified at
 19 all by anyone?
 15:48:07 20 MR. WARSHAWSKY: No, if you look up in the top left,
 21 it's your 6/23 version.
 22 MR. GINGOLD: The other one we had, somebody modified
 23 that document.
 24 MR. WARSHAWSKY: Well, the receipts worksheet, if you
 15:48:20 25 can tell me which of your PX-189s, we can do it that way, too.
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1 at that and thought about it, that was incorrect, so I adjusted
 2 that out. So the disbursement percentage that's used for the
 3 1909 to 1911 period, that's then the basis for the missing data
 4 around the 1909 to 1911 period, that would be completely
 15:45:08 5 unaffected by any change of Osage information.
 6 The other percentage -- the other information that we
 7 used for the other missing data later, where we used the CP&R
 8 check and EFT information from 1988 to 2002, there we are
 9 dividing by the adjustment, so that would cause that
 15:45:31 10 disbursement ratio to change.
 11 Q. Your disbursement rate would go up?
 12 A. It would go up, that's correct.
 13 Q. And for that middle period where you blended the two
 14 rates -- you remember?
 15:45:44 15 A. Then that would be an average. It would be slightly -- it
 16 would be higher as well, because one of the rates was higher and
 17 one of them was not.
 18 Q. Now let's go to Plaintiffs' Exhibit 53. This was a document
 19 that you reviewed this morning with Dr. Gingold.
 15:46:04 20 A. Yes, that's correct.
 21 Q. You remember this, the Comptroller General audit report for
 22 1955?
 23 A. Correct.
 24 Q. And if we go to page six -- it's actually, at the bottom it
 15:46:27 25 says page number two but I think actually on your exhibit it's
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1 BY MR. WARSHAWSKY:
 2 Q. Referring down to line 1955, do you see you've got the
 3 66.814 there?
 4 A. Yes.
 15:48:41 5 Q. In Column H. And that was the one that you took from the
 6 Comptroller General report?
 7 A. I believe that's correct.
 8 Q. Go back to the Comptroller General report, Plaintiffs'
 9 Exhibit 53. Now, on the same line you also had a disbursements
 15:49:05 10 figure, disbursements of Individual Indian Monies, total
 11 66.2 million?
 12 A. That's correct.
 13 Q. But you didn't use that in your analysis, did you?
 14 A. We did use that.
 15:49:16 15 Q. So if we go to disbursements, what are we going to see for
 16 1955?
 17 MR. WARSHAWSKY: Would you pull up disbursements,
 18 please? Why don't you go to Attachment A, 1955.
 19 BY MR. WARSHAWSKY:
 15:49:36 20 Q. Your disbursements figure in Column F is 49.37 million?
 21 A. Yes. As I testified this morning, we did use that number.
 22 We adjusted that number by the ratio we had talked about, and
 23 the reason, that document talks a lot about problems and issues
 24 that they had with disbursements, identification of
 15:49:56 25 disbursements, a lot of other things. So we adjusted that
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1 number.

2 Q. So this is a situation where you took one number from a

3 particular page but didn't take -- you didn't use the same

4 number -- well, you used the collections number for your

15:50:10 5 analysis but your disbursements number didn't make it to

6 Attachment A. You adjusted it down. Right?

7 A. We -- it made it, we adjusted it down because of the

8 concerns that were listed for the disbursement document. There

9 were no concerns listed for receipts but there were many

15:50:24 10 concerns listed for disbursements. So we adjusted it, as we had

11 examined earlier this morning about the ratio for adjustments

12 for when we saw funds that were identified for leaving through

13 the check and EFT, and we can identify that and compare it, we

14 used that adjustment factor here as well.

15:50:43 15 Q. And you testified this morning about the reasons that you

16 adjusted it down with respect to that report. Right?

17 A. That's correct.

18 MR. WARSHAWSKY: Would you go to that report again,

19 please, Plaintiffs' Exhibit 53? And we're going to look at

15:50:58 20 pages 10 and 11, at least the original pages 10 and 11 which now

21 appear on page eight of this exhibit.

22 BY MR. WARSHAWSKY:

23 Q. You remember this, what's showing here now, paragraphs one

24 and two, and then on the next page three and four?

15:51:15 25 A. Yes.

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1 one by one. There was not any particular word or phrase that

2 said disbursements were overstated by this amount. It was by

3 reading this document that I was concerned about disbursements,

4 so I adjusted them.

15:52:54 5 There's not any individual word or any individual

6 particular statement in here, it was as I read the document I

7 was concerned about the disbursements, and so I adjusted it.

8 THE COURT: Dr. Palmer, you said -- you used the exact

9 same words about three times in a row. I was concerned about

15:53:12 10 the disbursements so I adjusted it. How did you know the amount

11 by which to adjust it?

12 THE WITNESS: The amount that I used was the

13 calculation that I had seen later when I had actual disbursement

14 data through checks and electronic funds transfers, I compared

15:53:28 15 those to what the defendants had used during the time period

16 when they had data, and that they reported disbursement ratios

17 during the same years, I took the average of the amount by which

18 theirs were different from the amount, the disbursement ratio

19 that I reported. So I took that ratio and that's the number by

15:53:51 20 how much I adjusted things.

21 This was the 1.3 factor on Schedule C that we had

22 talked about this morning. That's the number. Because when I

23 had numbers that the defendants used, numbers that we found from

24 analyzing the checks and the electronic funds, so what I'm going

15:54:08 25 to call actual disbursements out of the fund, when I can compare

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1 Q. Those were the reasons that you testified about. Right?

2 A. These were indicative of the reasons. There were many --

3 there's a whole section of this document I believe that talked

4 about the problems with disbursements, and these are the ones we

15:51:28 5 talked about this morning.

6 Q. Well, you didn't talk about any other reasons in your

7 testimony this morning, did you?

8 A. These were examples that we used that we talked about this

9 morning of the reasons that I was concerned about the

15:51:41 10 disbursement number; therefore, I adjusted it.

11 Q. Look at paragraph number one here.

12 MR. WARSHAWSKY: If you'll blow that up, please.

13 BY MR. WARSHAWSKY:

14 Q. Can you tell me why paragraph one provided you with a basis

15:51:54 15 to adjust down the amount of disbursements? It says that

16 disbursements were not always supported by applications for

17 withdrawal.

18 A. Right. So there seemed to be -- disbursements were made, it

19 was not necessarily clear what those disbursements were. Here

15:52:20 20 it just said disbursements were made and there were concerns

21 about the disbursements, so I adjusted the disbursements.

22 Q. Is there anything in paragraph one that tells you that the

23 amount of disbursements reported is overstated? You can answer

24 yes or no and then we'll follow up.

15:52:40 25 A. I'm reading that and I suspect you're going to want to walk

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1 those apples to apples, I came up with that ratio, and that's

2 the number that I used to adjust.

3 THE COURT: Okay.

4 BY MR. WARSHAWSKY:

15:54:23 5 Q. There's certainly nothing that you saw in Plaintiffs'

6 Exhibit 53 that you could point to and tell Judge Robertson, oh,

7 74-and-a-half percent is the right number to reduce

8 disbursements by?

9 A. There's nothing in this document where it would give that.

15:54:41 10 Q. Dr. Palmer, let's turn to disbursements. One question I've

11 got at the outset is you've obviously got a lot more data points

12 now than Professor Cornell had when he ran his linear

13 interpolation back a few weeks ago. Right?

14 A. That's correct.

15:54:59 15 Q. Sir, recently you didn't just plug in the additional data

16 and rerun Professor Cornell's linear interpolation?

17 A. The linear interpolation was done on the revenue side, and

18 we did plug in the additional data, some of it was adjusted, and

19 then did the linear interpolation. So the same methodology was

15:55:19 20 used.

21 Q. I'm sorry?

22 A. So the same methodology was used. We did plug in the

23 additional data points.

24 Q. You saw Dr. Scheuren's analysis where he ran

15:55:32 25 Professor Cornell's model using the government's data?

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1 A. I don't know that I did. I think he said that he had done a
 2 calculation, but I don't know that I ever saw any output or any
 3 physical production of information. What was provided for
 4 Dr. Scheuren was a SAS code that ran his multi-imputation, but I
 5 don't know that there was any output that we ever were given
 6 about Dr. Scheuren calculating anything from Dr. Cornell. I
 7 mean, he testified to some numbers, but I didn't see any backup
 8 that I could see and look at.
 9 Q. So Dr. Scheuren testified that when he ran, he and his
 10 colleagues ran the model that Professor Cornell had run using
 11 the data points that we had, the difference was about
 12 31-and-a-half million dollars more than the currently reported
 13 \$423.7 million. You haven't been asked to analyze that, have
 14 you?
 15 A. No, I wasn't sure exactly what Dr. Scheuren had done, so I
 16 didn't.
 17 Q. Now, Professor Cornell's model, the one that you've been
 18 adapting, assumed a 70 percent --
 19 MR. GINGOLD: Objection, Your Honor. There was no
 20 change in the model.
 21 MR. WARSHAWSKY: I'm sorry, I'll rephrase the question,
 22 Your Honor.
 23 BY MR. WARSHAWSKY:
 24 Q. The model that you're here testifying to with regard to
 25 refinement of data.

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1 Q. And if you want, we can refer to documents in your
 2 attachment if that helps you.
 3 So basically what you did with 1887 is you took your
 4 .56 times .7736, and that's how you got your disbursements of
 5 .44 million. Right?
 6 A. Correct.
 7 Q. Delta on that, the nominal benefit is 13 -- .13 million.
 8 Right?
 9 A. Correct.
 10 Q. And that went into your accumulated benefit. Right?
 11 A. That is correct.
 12 Q. Now, when did that .13 million get paid out under your
 13 model?
 14 A. That particular .13, I can't identify any particular dollar
 15 when it gets paid out or not. There are funds that are
 16 available to the government and get paid out over time. At the
 17 very end we subtract off what the balance of the fund was, so if
 18 there were funds that were available that should have been in
 19 there, then the benefit to the government would include that.
 20 Q. Well, let's go to 1888. You started with your .13 million.
 21 Right?
 22 A. Correct.
 23 Q. We go through this same analysis here, revenues less
 24 disbursements.
 25 MR. WARSHAWSKY: You can blow this up a little bit.

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1 A. Okay.
 2 Q. Fair enough? You'll recall Professor Cornell had a uniform
 3 disbursement rate of approximately 70 percent?
 4 A. There was a uniform rate. I'm not sure exactly what it was,
 5 but that sounds familiar.
 6 Q. 69-point something percent?
 7 A. Whatever.
 8 Q. You don't know off the top of your head whether it was 69,
 9 70 percent, in that range?
 10 A. That sounds familiar, but I can't tell you the exact number.
 11 Q. Now, implicit in his model, if I'm correct, because I
 12 understand it's implicit in yours as well, is that if money
 13 isn't disbursed in the year that it's collected, it's never
 14 disbursed. Is that right?
 15 A. No.
 16 Q. Well, let's go ahead and take a look at Attachment A. Tell
 17 me how you calculated the disbursements figure for 1887, the
 18 .44 million figure?
 19 A. For 1887, on the disbursement rate in that year, was based
 20 upon the average for the 1909 to 1911 time period, where we had
 21 reported information, calculated percentage for that time
 22 period, and then used that disbursement ratio for the years that
 23 were missing around that point, which included 1887.
 24 Q. It came out to a disbursement rate of 77.36 percent. Right?
 25 A. That sounds correct.

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1 It's been a long day. Thank you.
 2 BY MR. WARSHAWSKY:
 3 Q. Revenues less disbursements, you've got your 1.07 minus .83,
 4 that's how you get -- and by the way, the .83, again, that's
 5 77.36 percent of 1.07. Right?
 6 A. That's correct.
 7 Q. So you get your difference of .24?
 8 A. That's correct.
 9 Q. Which gets added to .13, and I guess rounding gets you to
 10 .38. Right?
 11 A. That's correct. There would be the interest benefit also on
 12 the .13, which was the balance from the beginning. And that
 13 would be added. With the number of significant digits here, it
 14 rounds to zero.
 15 Q. But the .38, that's your benefit from 1888 plus your
 16 carry-forward from 1887. Right?
 17 A. That's the funds that were available to -- the accumulated
 18 benefit at the end of the year.
 19 Q. So none of that .13 from 1887 has come out of your
 20 calculation at the end of 1888. Right?
 21 A. In those particular two years that you mentioned, the
 22 disbursements were less than the revenues, so therefore those
 23 monies were still available.
 24 Q. And we could keep going through this. Tell me when we get
 25 to a point -- tell me when we get to a year where you think that

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1 .13, some part of it comes out?
 2 A. Well, I can't identify the specific 1887 dollars, but we
 3 talked about earlier, I think it was in the '30s, where there
 4 were disbursements greater than revenues, so the money was
 5 disbursed at that point.
 6 Q. So at the earliest, at the earliest some of the 1887 money
 7 comes out around 1934?
 8 A. There were funds available. If we look at the balance
 9 information of the IIM Trust, it was growing over time. So
 10 where the 1887 dollar went, did it go out in 1934, is it still
 11 part of the balance? I can't identify each individual dollar.
 12 It's not marked in the analysis.
 13 What I can see is funds were flowing into it and those
 14 benefits were available. Some of the accumulated benefits at
 15 the end of the year, obviously if the government chose to hold
 16 those funds instead of borrowing, that's not going to be a
 17 dollar that's going to be in the account that you identify
 18 because it's an opportunity that they decided to use, and that
 19 benefit accrues over time. It may not be a dollar sitting in
 20 the Treasury where they say, a-ha, here's this dollar of
 21 benefit, but clearly that account balances, and then at the end
 22 we subtract off all the interest and other information that was
 23 paid, as we talked about earlier today.
 24 So your question is when does the 1887 dollar get
 25 disbursed. There were some years when disbursements were

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1 was kind of a run rate for several years, that he said should be
 2 included. He did also not include the data that we had in the
 3 1950s range. For several years there we had information, and
 4 that was not included as well.
 5 Q. But for the years depicted here -- and we can go through all
 6 three pages, if you would, please -- where collections and
 7 disbursements are shown on this document, that's the
 8 disbursements and -- collections and disbursements amounts that
 9 you started with. Right?
 10 A. I'm not for sure we used all these specific ones, but we
 11 talked about the data sources, and if he were to use the same
 12 data sources, then they would be the same.
 13 MR. WARSHAWSKY: And let's go ahead and pull up the
 14 highlighted version, please.
 15 BY MR. WARSHAWSKY:
 16 Q. And if you would like, we can check it. I'll represent to
 17 you that the collections figures that we just saw on DX-461,
 18 those appear as the Column H figures in your receipts worksheet.
 19 A. Okay.
 20 Q. And similarly, the disbursements that we saw showed up as
 21 Column B figures in your disbursements worksheet. If you would
 22 like, we can check it. Or perhaps on redirect you'll get it
 23 covered.
 24 What I've done here with DX-461 here is I've
 25 highlighted the years where disbursements exceeded collections.

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1 greater than revenues, where monies would be going out, and
 2 there's some years where it was not.
 3 Q. Your model certainly doesn't pick a time when that 1887
 4 dollar comes out, though, does it?
 5 A. That is correct.
 6 Q. And implicit in your model is if it isn't disbursed through
 7 some year when collections were exceeded by disbursements, it
 8 stayed in your calculation. Right?
 9 A. It's available for use, yes.
 10 MR. WARSHAWSKY: Could you pull up Defendant's
 11 Exhibit 461?
 12 BY MR. WARSHAWSKY:
 13 Q. You said earlier that there were a few years where
 14 disbursements exceeded collections. Right?
 15 A. That's correct.
 16 MR. WARSHAWSKY: Pull up Defendants' 461, the
 17 un-highlighted version.
 18 BY MR. WARSHAWSKY:
 19 Q. Have you seen this document before, sir?
 20 A. That is the input data that Dr. Scheuren used for his model.
 21 Q. And the data that's reflected here, that reflects the
 22 collections and disbursements data that you started with in your
 23 analysis. Right?
 24 A. We had more data than this. He did not include the 1968
 25 number that I had testified about earlier that Dr. Angel said

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1 MR. WARSHAWSKY: And go through the three pages,
 2 please.
 3 BY MR. WARSHAWSKY:
 4 Q. And real roughly I'll tell you it works out to about a third
 5 of the years where disbursements in fact exceeded collections.
 6 That's inconsistent with your understanding of how the system
 7 worked. Is that right?
 8 A. I'm not sure what -- it was an understanding of the system.
 9 What I had testified to is we had examined data and examined it
 10 over time periods we had information. Particularly many of the
 11 years you have highlighted here, when you talk about 1988, 1989,
 12 1991, 1992, 1998, 1999, those are years for which we had CP&R
 13 data and electronic funds transfer data. In looking at what
 14 disbursements were, what actually went out of the accounts were
 15 much lower for those years. In fact, I believe, if you want to
 16 pull up my Schedule C, you'll see that the actual monies that
 17 flowed out for those years was less than 100 percent.
 18 So here you have one, two, three, four, five, six --
 19 seven years of data of over 100 percent -- of disbursements
 20 greater than revenues, when we actually look at the underlying
 21 checks and electronic funds transfers, it's significantly lower.
 22 So this data is different than my data, yes.
 23 Q. And we already talked earlier this afternoon about instances
 24 where disbursements were made in non-check form, right, the BB
 25 transfers?

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1 A. We talked about the BB transfers, and I believe your
 2 representation was those were never in the IIM Trust.
 3 Q. That's not necessarily correct. But I'm sure your counsel
 4 can cover it on redirect.
 16:07:39 5 My question, though, is I believe you indicated you
 6 didn't include transfers -- BB transfers as disbursements?
 7 A. What I included are all of the outputs, checks and EFTs.
 8 Ms. Herman testified that transfers were not disbursements, so
 9 when I looked at this, I included specifically that which was
 16:08:03 10 counted as disbursements, checks and EFTs.
 11 Q. Now, you were here for quite a bit of the trial. Do you
 12 recall any trial testimony explaining why in certain years
 13 collections would have been exceeded by disbursements?
 14 A. I know from documents that I read that there were some
 16:08:22 15 years, for example after the war, where disbursements were
 16 higher than they were before. So yeah, disbursements can be
 17 higher, and we noticed that in the data that I used.
 18 Q. My question, Dr. Palmer, was whether you listened to any
 19 testimony explaining why for certain years disbursements
 16:08:40 20 exceeded collections.
 21 A. I guess I'm not sure of any specific testimony you're
 22 referring to that, yes, disbursements can exceed collections.
 23 In fact, in my Schedule C, in the final year, the 2002, even
 24 with the check and EFT information that we have, we see in that
 16:09:04 25 year that the disbursements were greater than the receipts.

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1 Q. And I'm sorry, that was the one year in your 1988 to 2002
 2 period where you had that happen. Right?
 3 A. That is correct.
 4 Q. You mentioned Ms. Herman. Why don't we go ahead and look at
 16:09:16 5 some of her testimony.
 6 MR. WARSHAWSKY: Pull up 567, page 21, to 568, 20.
 7 This is from June 12, 2008, morning session.
 8 BY MR. WARSHAWSKY:
 9 Q. So we're starting at 567, line 21. And you can read,
 16:09:40 10 Question: "Ms. Herman, as far as Plaintiffs' Attachment C,
 11 what's marked as Plaintiffs' 56, have you had an opportunity to
 12 review that calculation?"
 13 And just to back off a moment, Attachment C, that's
 14 comparable to your Attachment C now?
 16:09:54 15 A. No.
 16 Q. It's not?
 17 A. No.
 18 Q. Okay. Well, let's talk about Attachment C. Then we can get
 19 back to Ms. Herman.
 16:10:03 20 A. Okay.
 21 Q. What is your Attachment C?
 22 A. The difference between the Attachment C that I used and the
 23 Attachment C that Dr. Cornell used is I included electronic
 24 funds transfer, which were not available to Dr. Cornell, as we
 16:10:17 25 just recently received that information.

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1 So the testimony was concerning whether or not there
 2 were electronic funds transfers information included. He had --
 3 Dr. Cornell had not, I did. So they're quite different.
 4 Q. I'm sorry, maybe I was not being clear. What I meant is
 16:10:35 5 Attachment C is your disbursement calculation for 1988 to 2002.
 6 Right?
 7 A. That is correct.
 8 Q. And that's what Attachment C was for Professor Cornell.
 9 Right?
 16:10:43 10 A. A very different calculation.
 11 Q. But it was his disbursement calculation for 1988 to 2002.
 12 Right?
 13 A. Based upon the available data that he had at the time, yes.
 14 Q. Good.
 16:10:55 15 MR. WARSHAWSKY: Let's put Ms. Herman's testimony back
 16 up, please.
 17 BY MR. WARSHAWSKY:
 18 Q. And so we're there. The answer: "Yes, I have."
 19 Question: "And have you compared it to your
 16:11:07 20 calculation of total disbursements in DX-371?"
 21 Do you know what DX-371 was?
 22 A. Yes.
 23 Q. Answer: "Yes. Our disbursement rate, at least from 1972
 24 through 2007, ranges from approximately 83 percent to
 16:11:20 25 120 percent in any given year."

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1 Dr. Palmer, did you consider her testimony when you
 2 were revising Attachment C?
 3 A. Yes. In fact, that's quite informative of the fact that we
 4 calculate this ratio. Because when we had the checks and EFT
 16:11:40 5 information in a given year, we were able to look at what
 6 Ms. Herman did and saw that her numbers were higher. So indeed
 7 she had those numbers, but when we looked at the actual
 8 disbursements out of the account, that her numbers were higher.
 9 And that's the reason why we adjusted the other numbers, because
 16:11:56 10 her numbers were higher, when we had actual information and she
 11 didn't.
 12 Q. Okay. Well, now, why don't we go to your disbursements
 13 worksheet. This was Column E.
 14 MR. WARSHAWSKY: Yeah, scoot over to the disbursements
 16:12:26 15 worksheet.
 16 BY MR. WARSHAWSKY:
 17 Q. And we're talking about the years 1972 to 1987. Right?
 18 You're with me?
 19 A. Okay.
 16:12:42 20 Q. And then 2003 to 2007.
 21 MR. WARSHAWSKY: I know you can't highlight both sets.
 22 BY MR. WARSHAWSKY:
 23 Q. But these are years where you adjusted the AR-171 data.
 24 Right?
 16:12:53 25 A. That's correct.

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1 Q. And this is where you applied your ratio, your 134.1 percent
 2 ratio, basically reducing it by 74-and-a-half percent, to
 3 74-and-a-half percent of what's in the AR-171?
 4 A. Around in that neighborhood, yes.
 16:13:14 5 Q. I think that's kind of what happens when you do the 134.1,
 6 the ratio?
 7 A. The number, it's around that number.
 8 Q. And explain the reason that you concluded that the reported
 9 information should be reduced to three-quarters of the amount
 16:13:29 10 for purposes of your analysis?
 11 A. Okay. I'm happy to. We just talked about that. But when
 12 we had actual information from the period 1988 to 2002, these
 13 are the checks and electronic funds transfers, so we had all of
 14 the funds that were flowing out of the accounts, we looked at
 16:13:46 15 those years and we compared those years with Ms. Herman's
 16 numbers for those years.
 17 And we saw that for all the years the numbers were
 18 different, so we took what the average difference was and
 19 applied that to years for which we didn't have information.
 16:14:02 20 Because had we had the information, for 1987, if we had the CP&R
 21 data, if it existed, or for 2003 onward we had the CP&R and the
 22 EFT information, then that probably also would have a
 23 difference, because we noticed for all those years where we did
 24 have the identical information, so we took the average of the
 16:14:23 25 information which we did have, when we could make an apples to
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1 Q. Is it your -- do you have an understanding as to whether the
 2 figures that she utilized in the testimony that we just reviewed
 3 are estimates?
 4 A. I looked at her information. I do not know exactly where
 16:16:19 5 each information came from. When I had information for the same
 6 time periods that she reported information, I used that to
 7 inform me about other time periods.
 8 Q. Well, 2003 to 2007, Dr. Palmer, you know she took that from
 9 audit reports. Right?
 16:16:34 10 A. That's correct.
 11 Q. But you've concluded that the data she took from audit
 12 reports should be adjusted to three-quarters of the amount
 13 reported?
 14 A. If you'll look at the numbers that we estimated --
 16:16:47 15 Q. Yes or no, please.
 16 A. Well, I was answering the question. If you look at the
 17 numbers we used from 2002, 2001, 2000, those are also from audit
 18 report information. And looking at the actual disbursements
 19 from the checks and EFTs, our numbers were different from hers
 16:17:04 20 with the same source of data. So given it's the same source of
 21 data, we adjusted that.
 22 Q. Let's take it a year at a time. 2003, and I'm going from
 23 your schedule, sir, the report, 192-and-a-half million dollars,
 24 did that come from an audit report?
 16:17:23 25 A. I believe it did.
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1 apples comparison, and then for the years when we didn't have
 2 that information, we used that average ratio to adjust
 3 backwards.
 4 Q. What was your understanding of the source of the data that
 16:14:37 5 Ms. Herman was using in her analysis?
 6 A. She had different sources of information.
 7 Q. Okay. 1972 to 1985, I mean, were these estimates that she
 8 came up with?
 9 A. I don't know. I know that she was using lots of different
 16:15:01 10 data over time. I can't tell you exactly which item for which
 11 years she used. She presumably had a consistent series of her
 12 estimated information, and we --
 13 Q. I beg your pardon?
 14 A. I don't know exactly what she used.
 16:15:18 15 Q. Well, do you know if she was using actual recorded data from
 16 the accounting systems?
 17 A. Well, when you're saying actual recorded data, there's a lot
 18 of -- there's been a lot of issues in this trial about how
 19 accurate information is. The fact that there were not
 16:15:34 20 balances --
 21 Q. I'm sorry, the afternoon is late. I'm trying to get through
 22 this. If you'll answer my question, did Ms. Herman use data
 23 from the accounting systems for her numbers?
 24 A. The exact data she used, I do not remember where it came
 16:15:54 25 from.
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1 Q. But you've only reported disbursements of 143.5 million.
 2 Right?
 3 A. That's correct.
 4 Q. What was the basis for your concluding that the number in an
 16:17:36 5 audit report was off by 34 percent?
 6 A. From the information we had from audit reports, for years
 7 when we had audit reports and Ms. Herman reported those numbers,
 8 2002, 2001, 2000, those are audit report information years, her
 9 numbers were different than what we -- when we calculated from
 16:17:59 10 the CP&R and from the EFT data.
 11 So we adjusted her numbers because when we had the same
 12 information from the same reports in those years, there was a
 13 difference.
 14 Q. And if I asked you about the numbers for 2004, 2005, 2006,
 16:18:15 15 and 2007, you would give me the same answer. Right?
 16 A. That is correct.
 17 Q. So in all those years, Ms. Herman took numbers from audit
 18 reports, you concluded those numbers were off by 34 percent?
 19 A. For the years we had information and we saw there was a
 16:18:33 20 difference -- when we had the actual check and EFT information,
 21 we saw there was a difference, based upon that information, we
 22 did adjust those years.
 23 Q. Now, you're not here to testify as an accountant. I
 24 understand that. Right?
 16:18:46 25 A. That is correct.
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1 Q. But you looked at audit reports and you've probably heard a
2 lot of testimony during the course of this hearing about
3 qualified opinions. Right?
4 A. Yes, I have.
16:18:56 5 Q. Do you have any basis to believe that an auditor would issue
6 a mere qualified opinion if disbursements were off by
7 34 percent?
8 A. I'm just telling you what we did from our data and compared
9 to the data that she reported for the years the same information
16:19:17 10 is reported, and when we looked at what was from the CP&R and
11 the EFT data.
12 Q. Do you know what the GLDL is?
13 A. It's a ledger. Yes.
14 Q. And what kind of ledger is it?
16:19:32 15 A. I'm not specifically -- I don't know specifically how it's
16 used or what the particulars of it are.
17 Q. Do you know if it's a ledger that Ms. Herman used in
18 preparing any of the numbers that you've adjusted by 34 percent?
19 A. I don't know.
16:19:49 20 Q. If I represent to you that the GLDL was utilized by
21 Ms. Herman for 1972 to 1985, do you have a basis to tell
22 Judge Robertson why --
23 MR. GINGOLD: Objection, Your Honor. That was prepared
24 by CD&L and provided to Ms. Herman.
16:20:24 25 MR. WARSHAWSKY: I'll take it modified as Mr. Gingold

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1 put it.
2 THE COURT: All right.
3 BY MR. WARSHAWSKY:
4 Q. Subject to Mr. Gingold's modification, do you have a basis
16:20:33 5 to tell Judge Robertson why that data requires an adjustment of
6 basically 74-and-a-half percent applied against the amount
7 reported?
8 A. Same as -- when we had information that we could compare
9 directly from what information she reported, we calculated our
16:20:50 10 ratio that way. I believe during the years you're indicating,
11 the '72 to '87, those years did not balance. I have no idea
12 what was the data specifically she used.
13 Again, the adjustment we did was based upon where we
14 could compare what the disbursements were with what the
16:21:11 15 information she reported.
16 Q. Now, let me ask you about the CP&R data. Because you've
17 talked about your adjustment and you talked about this -- also
18 talked about this adjustment where you knocked off about six
19 percent, where you went from the reported CP&R and adjusted it
16:21:29 20 down. Right?
21 A. That's correct.
22 Q. You're with me?
23 A. I am.
24 Q. We talked earlier about the government's brief filed in
16:21:38 25 April.

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1 MR. WARSHAWSKY: And if you'll pull up the government
2 brief, please, at pages 108 to 110.
3 BY MR. WARSHAWSKY:
4 Q. Dr. Palmer, I'm asking you now about the section that began:
16:22:01 5 "The evidence at the October 2007 trial demonstrated that
6 virtually all revenue disbursed by check reached the
7 beneficiaries."
8 MR. WARSHAWSKY: And you can flip to the next two pages
9 real quickly?
16:22:16 10 BY MR. WARSHAWSKY:
11 Q. Did you review this section of the brief before forming your
12 opinions?
13 A. I do not remember anything specific about this brief.
14 Q. Well, let's look at the bottom of 109 carrying on to 110.
16:22:36 15 One of your assumptions was that revenue from uncashed checks
16 benefitted the government. Right?
17 A. Revenue from uncashed checks benefitted the government? If
18 the government did not pay out the money, then it was not
19 disbursed.
16:22:57 20 Q. Well, explain again your adjustment to the CP&R data.
21 A. The CP&R data lists the amount of checks, the check amount
22 that was written in a given year. From a document that we
23 found, there was the amount of checks that were cashed, the
24 dollar amount, so we adjusted what was written versus what was
16:23:23 25 cashed to get an effective amount of what went out, a

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1 disbursement amount.
2 Q. And what happened to the uncashed amount in your analysis?
3 A. It was not distributed.
4 Q. It ended up being an amount that the government benefitted
16:23:37 5 from. Right?
6 A. It's an amount of funds available to the government. We
7 looked at what was disbursed. If it wasn't disbursed, it was
8 available.
9 Q. When you were provided this brief in April of this year --
16:23:52 10 and I'm referring specifically to this section here which is
11 highlighted, it says, quote, "Treasury recredits Interior for
12 uncashed checks, citing testimony from the October 2007 hearing,
13 and Interior in turn recredits the IIM accounts for those
14 uncashed checks," again citing testimony from last October's
16:24:14 15 hearing.
16 Did you look at any of the testimony cited in the brief
17 there?
18 A. That's very consistent with what we did.
19 Q. You looked at the testimony?
16:24:23 20 A. I had read this. I didn't focus on this, but this is very
21 consistent with what we did. It says that Treasury recredits
22 the accounts so that the accounts are not charged with a
23 disbursement. Those funds are still there. That's the way I
24 read this, and that's consistent with what we did.
16:24:41 25 Q. But your calculation, where you've adjusted the CP&R data,

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1 it reduces the disbursement rate, doesn't it, based upon
 2 uncashed checks?
 3 A. No. What we're looking at is we're looking at funds that
 4 were paid out. If a check was written but never cashed, that
 5 check was not paid out. So we added together all of the checks
 6 that were cashed, i.e. paid out, and all of the electronic
 7 transfers. We looked at all of the funds that left. If a check
 8 was uncashed, it never left. The funds never left.
 9 And this is very consistent with that. The accounts
 10 are recredited, that says those funds are still there, the funds
 11 were still in the account. They weren't cashed, they didn't
 12 leave the system, they didn't leave the Trust. It's exactly
 13 what we did.
 14 Q. So how did you do that when you were adjusting the CP&R
 15 data?
 16 A. What we looked at the CP&R is the amount of funds that left,
 17 the amount of funds that were paid out. So if a check were
 18 written but it was not cashed, then the funds didn't leave. And
 19 that's consistent exactly with what it says here, because it
 20 says that uncashed checks were in turn credited to the account.
 21 So they never left the IIM Trust.
 22 So we looked at the cashed checks and we looked at the
 23 electronic funds transfers; i.e., the information, the data on
 24 the funds that went out. So that's completely consistent with
 25 this.

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1 Q. Are you saying your understanding is that the CP&R data was
 2 only cashed checks?
 3 A. No, the CP&R data was not. It was all checks. That's why
 4 we used the other document that was cited for the checks cashed,
 5 the amount there, and that's what caused the adjustment. So
 6 that the uncashed checks amount was not counted as a
 7 disbursement because it was sitting in the accounts. That's
 8 exactly what this says, so we're consistent.
 9 Q. Now, you said that you didn't consider the DCV work
 10 presented to the Court last fall, I assume. I mean, you didn't
 11 know what DCV was. Right?
 12 A. That's correct.
 13 Q. So you don't know what the DCV report's findings were with
 14 regard to the recrediting of unpaid checks?
 15 A. I don't know what their findings were. If I look at the
 16 brief here that you're pointing to me, it was very consistent
 17 with what we did.
 18 Q. But you're still including as a claimed amount the uncashed
 19 check amount. Right?
 20 A. No. I'm having a hard time -- what we did to the CP&R data
 21 is the amount of checks that were written. A fraction of those
 22 were cashed. What we're trying to focus on here is how much
 23 money left the system. If a check was not cashed, it never left
 24 the trust fund. So we look at the fraction that left the trust
 25 fund, we look at the amount, and we take that as a fraction of

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1 revenues.
 2 If it was indeed credited back, which is exactly what
 3 this says, it never left the Trust. So that's completely
 4 consistent with what we did.
 5 Q. Let's move on.
 6 THE COURT: Do you know, Dr. Palmer, whether a check
 7 drawn payable to an IIM account holder is debited to the account
 8 when the check is cut or when it's cashed?
 9 THE WITNESS: I don't know what it is. The document
 10 that Treasury -- that government just said is the funds go right
 11 back in.
 12 THE COURT: You're talking about the flow of money out
 13 and back, but I'm asking you about accounting practice,
 14 bookkeeping practice. Do you know?
 15 THE WITNESS: I don't know the practice.
 16 THE COURT: Do you know, Mr. Warshawsky?
 17 MR. WARSHAWSKY: I'm sorry.
 18 THE COURT: You're not the witness here.
 19 MR. WARSHAWSKY: I do not know, Your Honor.
 20 Let's pull up Defendant's Exhibit 238.
 21 BY MR. WARSHAWSKY:
 22 Q. Now, you're familiar with this document. Right?
 23 A. That's correct.
 24 Q. And what is it?
 25 A. This is the information that talks about disbursement

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1 activities for Individual Indian Money accounts.
 2 Q. This is a document that you were looking at when you were
 3 trying to understand PACER data and CP&R and all that. Right?
 4 A. That's correct.
 5 MR. WARSHAWSKY: And blow up the lower left-hand
 6 corner.
 7 BY MR. WARSHAWSKY:
 8 Q. Do you have an understanding as to what information is
 9 presented here?
 10 A. There's a row that represents the check amounts, the row
 11 that represents the ACH/EFT, and then there are several other
 12 items that come to a total.
 13 Q. And do you know what this number opposite -- it says FIN
 14 statement, I guess that's financial statement, 336.6 million.
 15 Do you have an understanding as to what that refers to?
 16 A. I believe that is the number that Ms. Herman used as her
 17 disbursement number. But I'm not sure.
 18 Q. For 1999?
 19 A. I think that's right, but I'm not sure.
 20 Q. And of that amount, we've talked about checks.
 21 A. Correct.
 22 Q. 175.5 million. You understand that's the CP&R data?
 23 A. That's the amount of checks cashed, so there's the
 24 difference, that number would be used to adjust the CP&R data to
 25 get at the amount that was actually paid out.

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1 Q. But it's taken from the CP&R data?
 2 A. I don't know where that number came from.
 3 Q. ACH/EFT, do you know what that is?
 4 A. Those would be the electronic funds transfers.
 16:31:03 5 Q. IPAC, do you know what that is?
 6 A. No, I do not.
 7 Q. BB transfers, we've talked about that. Refresh my
 8 recollection. Do you know what a BB transfer is?
 9 A. You had shown me today some Osage numbers that had a BB in
 10 the numbers.
 11 MR. WARSHAWSKY: Let's pull up from the transcript last
 12 October, this is from October 16, 2007, the afternoon session,
 13 page 888, lines 12 through 15 in particular is what I want to
 14 get to.
 16:31:54 15 BY MR. WARSHAWSKY:
 16 Q. Dr. Palmer, did you review this testimony?
 17 A. What was it again?
 18 Q. I'm sorry, this is testimony of a witness named Rob Winter.
 19 Have you ever heard of Rob Winter?
 16:32:07 20 A. Yes. He prepared the exhibit I believe you just showed.
 21 Q. Referring to Defendant's Exhibit 238?
 22 A. Correct.
 23 Q. And did you review this testimony in particular in
 24 connection with understanding Exhibit 238?
 16:32:21 25 A. I may have looked at it. I don't recall it directly.
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1 disbursements, so I did not include them. I'm sorry, she said
 2 that BB transfers were not disbursements. That's what I said.
 3 That was her testimony.
 4 Q. Okay. So you understand that BB transfers aren't money
 16:33:49 5 coming out of the IIM system. Is that correct?
 6 A. BB transfers were not disbursements as she said, so they
 7 were not checks or EFTs.
 8 MR. WARSHAWSKY: Let's pull up Defendants' Exhibit 480,
 9 please.
 16:34:25 10 BY MR. WARSHAWSKY:
 11 Q. And specifically within this exhibit, I want to go to the
 12 last page, page nine.
 13 MR. WARSHAWSKY: And blow it up a little bit for us
 14 here.
 16:34:42 15 BY MR. WARSHAWSKY:
 16 Q. This is pretty similar to a document that we looked at
 17 earlier this afternoon. Right?
 18 A. We looked at this form of a document earlier today.
 19 Q. Do you remember when we were going through DX-372, the
 16:34:58 20 binder stuff?
 21 A. Yes.
 22 Q. It's an intrabureau cash transaction authorization. And
 23 again, if you look in the upper right-hand corner, the document
 24 number begins with BB?
 16:35:11 25 A. That's correct.
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1 Q. You see lines 12 through 15 on page 888, where he's
 2 discussing in fact that \$73 million figure that we were just
 3 looking at for BB transfers?
 4 A. Yes.
 16:32:38 5 Q. Question: "Then you have a line of \$73 million plus for BB
 6 transfers. What do those represent?"
 7 Answer: "That's basically transfers out of the IIM
 8 trust fund to Tribal Trusts."
 9 Did you consider that testimony as you were going about
 16:32:54 10 developing a disbursement rate?
 11 A. I also -- the current trial that we are in, Ms. Herman
 12 testified that BB transfers were not --
 13 Q. Dr. Palmer, please.
 14 A. You're asking me and I'm telling you.
 16:33:07 15 MR. GINGOLD: Objection, Your Honor. Can he let the
 16 witness answer?
 17 THE COURT: I think he's asking for a yes or no answer.
 18 I think the witness can answer the question yes or no and then
 19 explain it.
 16:33:18 20 THE WITNESS: Okay.
 21 A. I did not use this. I used something else.
 22 BY MR. WARSHAWSKY:
 23 Q. Well, I know you want to tell us, so what else did you use
 24 instead of that?
 16:33:28 25 A. Ms. Herman testified that BB transfers were not
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1 Q. And do you see it's disbursement coming out of 14X6039 of
 2 \$4.47 million?
 3 A. Yes.
 4 Q. And going into three 14X accounts beginning with 7s, do you
 16:35:31 5 see that on the right-hand side?
 6 A. Yes, I do.
 7 Q. And do you have an understanding as to whether this kind of
 8 document backed up a check or electronic transfer disbursement
 9 or some other kind of transfer?
 16:35:46 10 A. I don't know.
 11 Q. Well, you know from that document that we were looking at a
 12 few moments ago, DX-238, that there was a line item for BB
 13 transfers. Right?
 14 A. There was.
 16:36:01 15 Q. And it was below the checks and below the electronic
 16 transfers. Right?
 17 A. That's correct.
 18 Q. Does that cause you to suspect at least that it might be
 19 something other than a check or an electronic transfer?
 16:36:16 20 A. If it were a check or an electronic transfer, it would be in
 21 the checks or electronic transfers.
 22 Q. Right. Thank you. And you see from the description, by the
 23 way, below, transfer funds from IIM special deposit to tribal
 24 receipt account. Do you see that?
 16:36:34 25 A. I do.
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1 Q. Based on your review of documents in this case, do you have
 2 any understanding as to what that description means?
 3 A. I know the Special Deposit Account was something that I
 4 believe funds went into before they were distributed to
 5 individual accounts.
 6 Q. I'm sorry?
 7 A. I believe that the special deposit were funds that went into
 8 there before they were distributed to individual accounts.
 9 Q. But in this case it's a distribution to a tribal account.
 10 Right?
 11 A. That's what it says.
 12 Q. So it's transferring funds from the IIM to tribal. Right?
 13 A. It says to tribal receipt accounts. I don't know exactly
 14 what those are, so...
 15 Q. And you remember earlier when we were talking about the
 16 notion of money coming into the IIM system and then getting
 17 distributed to something other than an IIM account? Do you
 18 remember that?
 19 A. I know that -- the IIM system I believe is something that
 20 the defendants had talked about and Ms. Herman talked about.
 21 Exactly where those funds are and what is credited to the IIM
 22 for receipts for that group, I'm not sure of the accounting of
 23 all of that. I don't know.
 24 Q. But when we were talking about that 77 percent figure from
 25 DX-365, which was subject to revision -- you recall the document

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1 Do you remember that testimony?
 2 A. Yes. I also remember specific testimony about BB transfers,
 3 and she said that those were not disbursements.
 4 Q. My question, you remember this testimony. Right?
 5 A. Yes.
 6 Q. So you remember that disbursements included bookkeeping
 7 transfers? Yes or no, please.
 8 A. There was confusion to what disbursements were. I recall
 9 that testimony, yes.
 10 Q. But your disbursements calculation doesn't include
 11 bookkeeping transfers, does it?
 12 A. My disbursement calculation includes EFTs and CP&R checks,
 13 the money that went out of the fund.
 14 Q. Thank you.
 15 MR. WARSHAWSKY: Let's pull up Defendant's Exhibit 481,
 16 please. And again let's go to page two now.
 17 THE COURT: Just hold it a minute. Not to be too blunt
 18 about this, but are you saying that your idea of disbursements
 19 just ignores all those other boxes that Ms. Herman drew on that
 20 flowchart that she made of third-party payments and Tribal IIM
 21 monies and transfers?
 22 THE WITNESS: What I'm trying to capture is the bottom
 23 box, effectively, what's disbursed to the individuals. She had
 24 talked about all these different boxes and then she was asked on
 25 her cross-examination, in 2007 can you identify what those

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1 said that. Right?
 2 A. I'm sorry, which one?
 3 Q. DX-365, the one used as a basis for your 77 percent
 4 adjustment.
 5 A. Yes.
 6 Q. You remember we were talking about what that 23 percent
 7 difference could be. Right? You assumed that it meant receipts
 8 were understated by 23 percent?
 9 A. I used that as a basis for my adjustment factor.
 10 Q. But in fact, isn't this kind of transfer the kind of
 11 transfer that would have been collected into the system but not
 12 distributed to an IIM beneficiary?
 13 A. I can't say specifically.
 14 MR. WARSHAWSKY: Let's pull up Defendant's Exhibit 481,
 15 please.
 16 BY MR. WARSHAWSKY:
 17 Q. And before we get to this, by the way, let me ask you -- I'm
 18 reading from the June 12, 2008 morning session when Ms. Herman
 19 was on the stand, specifically page 570, lines one through six.
 20 The testimony was, Question: "So your calculation of total
 21 disbursements includes all disbursements?"
 22 Answer: "That's correct."
 23 Question: "And it includes things that are bookkeeping
 24 transfers as well as checks and other electronic transfers?"
 25 Answer: "That's correct."

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1 disbursements are? And she said she couldn't. She hadn't been
 2 asked to, she didn't know what they were.
 3 So we're trying to capture what it is that's going to
 4 the individual Indians.
 5 THE COURT: But you're including as receipts everything
 6 in the top box, but you're taking out only what is a check, a
 7 CP&R check or an EFT payment. Is that basically it?
 8 THE WITNESS: I'm not exactly sure what's all in the
 9 top box of that system. If there are funds that go -- are
 10 flow-through funds to the tribal that aren't included in
 11 individual monies, then they wouldn't be included in our receipt
 12 accounts. If it was included, then we're not including it.
 13 THE COURT: As I understood Ms. Herman's testimony,
 14 these BB fund transfers have to be deducted from total receipts
 15 if you're going to understand disbursements correctly. And
 16 you're telling me you're not deducting it.
 17 THE WITNESS: If we could identify them in receipts,
 18 then they would be deducted, because we're not including them in
 19 disbursements.
 20 THE COURT: Okay.
 21 MR. WARSHAWSKY: Let's pull up Defendant's Exhibit 481,
 22 please.
 23 THE COURT: That may be where the 34 percent comes in.
 24 BY MR. WARSHAWSKY:
 25 Q. Now, I suspect you haven't seen this particular document

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1 before, Dr. Palmer, but you've seen documents like this. Right?

2 A. Looks similar form as we looked at earlier today.

3 Q. And not to belabor it, but again document number in the

4 upper right-hand corner, this is another one of these BB

16:42:57 5 documents. Right?

6 A. Correct.

7 Q. And do you know -- you don't know, I assume, why there's a

8 "T" following the number, 03T?

9 A. No, I do not.

16:43:08 10 Q. So you don't know if that refers to the fact that it has

11 anything to do with tribal?

12 A. I do not know.

13 Q. Looking at the disbursement here, this shows as a

14 disbursement coming from a tribe account. Right?

16:43:24 15 A. In the disbursement column it says Warm Springs Tribe.

16 MR. WARSHAWSKY: Why don't you blow it up with the

17 number above, please?

18 BY MR. WARSHAWSKY:

19 Q. Yeah, looking at the disbursement side, you see there's a

16:43:46 20 number above it, you know, I'm not positive about this, but

21 certainly the fourth character is a "T." Do you see that

22 number?

23 A. I do.

24 Q. And below it it says Warm Springs Tribe, and it's disbursing

16:44:03 25 roughly \$8.76 million to Warm Springs Tribe. Do you see that?

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1 was the 33.6 million. The 73 as a percentage of that is...

2 Q. Do you want me to do the math?

3 A. Sure.

4 Q. I come up with 21.7 percent. What you've done is --

16:46:39 5 A. That seems about right.

6 Q. I'm sorry?

7 A. That seems about right.

8 Q. 73.5 million divided by 336.6 million?

9 A. Right.

16:46:46 10 Q. And that's, 21.7 percent in this case, those are transfers

11 your analysis disregards when you calculate a disbursement rate.

12 Correct?

13 A. Those transfers are not in our disbursement number.

14 MR. WARSHAWSKY: Thank you, Your Honor. If I might

16:47:06 15 have just a moment.

16 Thank you, Dr. Palmer. I have no more questions, Your

17 Honor.

18 THE COURT: Mr. Gingold?

19 MR. GINGOLD: Yes, Your Honor.

16:47:53 20 Let's start with the easy one first, Your Honor. You

21 asked a question about what happens when a check is cut. Could

22 we pull up Cobell V, please?

23 Your Honor, this Court has already made a finding in

24 that regard. If we can focus on the highlighted portion, it

16:48:13 25 states as follows: "When OTFM issues a check, the funds remain

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1 A. I do.

2 Q. And if you look at the explanation below it, "Transfer of

3 funds from Special Deposit Account to the Tribe's proceeds of

4 labor account, in accordance with OTFM policy memo 97-013,

16:44:31 5 policy to prohibit the establishment of tribal accounts in the

6 IIM system."

7 Do you have any understanding as to what that

8 description is referring to?

9 A. I do not know.

16:44:45 10 Q. So you don't know if this is a transfer of Tribal IIM money

11 out of the IIM system?

12 A. No.

13 Q. You don't know what that OTFM policy referenced is, do you?

14 A. There was a policy that would prohibit tribal money in the

16:45:07 15 IIM system.

16 MR. WARSHAWSKY: Now let's go back to DX-238. Just

17 blow up that box there.

18 BY MR. WARSHAWSKY:

19 Q. Approximately what percentage of the total amount of

16:45:37 20 disbursements reflected here are BB transfers?

21 A. The total of the FIN statement or the total of the total

22 column or what?

23 Q. I'll take either one. Which number would be comparable to

24 the disbursements figure that you're using in your analysis?

16:46:06 25 A. I believe that the number that Ms. Herman used on her DX-371

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1 in the TGA, so the United States still enjoys the benefit of the

2 Trust money; however, until the check is cashed, the amount is

3 debited from the invested fund, thereby depriving the

4 beneficiary of any interest."

16:48:42 5 Second, Your Honor, may I go on to the next point?

6 This issue was debated at length in Trial 1 in 1999, and this

7 Court made a finding in that regard.

8 THE COURT: All right. I'll take that as a finding. I

9 don't want to waste any more time with it. The funds remaining

16:48:57 10 in the TGA is not quite the same thing as a bookkeeping entry

11 debiting the account. But let's move on.

12 MR. GINGOLD: Okay, Your Honor.

13 THE COURT: I mean, the funds remain in my bank when I

14 cut a check, too, but I write it down on my little -- actually,

16:49:20 15 I write it down on my electronic thingamajigger.

16 MR. GINGOLD: That's because you write the check. The

17 government writes the check, so the beneficiary doesn't even

18 know when the check has been cut. The funds are debited from

19 the 14X6039 account --

16:49:38 20 THE COURT: But when I decide how much more money I

21 have to write a check on, I look at my check register and I say,

22 whoa, I've written that check and it hasn't cleared yet, so it's

23 debited to the account as a bookkeeping proposition even though

24 the bank doesn't know it and the guy who cut my lawn may have

16:49:56 25 lost the check. I don't know.

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1 MR. GINGOLD: But you wrote the check.
 2 THE COURT: But I wrote the check, and I know that I've
 3 deducted it from my check register.
 4 MR. GINGOLD: That's correct, Your Honor.
 16:50:07 5 THE COURT: But I'm not the TGA or anything close to
 6 it, so go on.
 7 MR. GINGOLD: That's true, Your Honor.
 8 Let's go to Defendant's 365. If we can make this a
 9 little clearer, please.
 16:50:19 10 I would like to keep this on the screen.
 11 REDIRECT EXAMINATION
 12 BY MR. GINGOLD:
 13 Q. Do you recall Mr. Warshawsky asking you questions regarding
 14 BB transfers in 1993 and 2000 and periods of that particular
 16:50:43 15 time, showing vouchers or statements of transactions?
 16 A. Yes, that was the time period he asked me about.
 17 Q. Was it your understanding based on Mr. Warshawsky's
 18 questions that funds were being deposited into the Individual
 19 Indian Trust account and then were being transferred to a tribal
 16:51:04 20 account? Is that what your understanding is?
 21 A. I believe that's the inference he was making.
 22 Q. Beg your pardon?
 23 A. I believe that's the inference he was making.
 24 Q. I would like to point your attention to Defendants' 365.
 16:51:20 25 And if you look at the -- first of all, on the top, under item A
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1 or portion A of this, you see various periods of time in the
 2 left column. Correct?
 3 A. That is correct.
 4 Q. You have 1909 to 1937, 1938 to 1984, 1985 to 2000, 2001 to
 16:51:42 5 2006, and then there are various columns from total collections,
 6 et cetera, adjacent to that. Correct?
 7 A. Correct.
 8 Q. Do you see the heading in the column next to the period
 9 column?
 16:51:53 10 A. Total collections excluding Tribal IIM.
 11 Q. And do you see the collections on the bottom of that column?
 12 Do you see under the entire period?
 13 A. The 13.1 million, 13.2 million?
 14 Q. I think it's billion.
 16:52:10 15 A. Billion.
 16 Q. Do you know why funds would be transferred out of the
 17 Individual Indian Trust account to a tribe if Tribal -- if
 18 Tribal IIM collections were not placed in the Trust?
 19 A. If --
 16:52:33 20 Q. If the collections excluded Tribal IIM --
 21 A. No, no, I'm just thinking that what we had looked at, if
 22 there were a tribal account in IIM and the funds were
 23 transferred to the tribe, if this excludes Tribal IIM, I don't
 24 have any reason to believe that there would be that transfer as
 16:52:51 25 part of this.
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1 Q. And you see this includes a period 1985 to 2000, doesn't it?
 2 A. Yes, it does.
 3 Q. I would like to talk about the Tribal IIM issue and the
 4 calculation of Tribal IIM.
 16:53:11 5 MR. GINGOLD: Can we bring up the Morgan Angel
 6 testimony in that regard, please?
 7 BY MR. GINGOLD:
 8 Q. Do you recall questions from Mr. Warshawsky about how
 9 Tribal IIM are calculated in your model?
 16:53:41 10 A. We did talk about Tribal IIM.
 11 MR. GINGOLD: No, if we can have Dr. Angel's testimony.
 12 If we can focus it on the...
 13 BY MR. GINGOLD:
 14 Q. You sat through Dr. Angel's testimony, did you not?
 16:54:09 15 A. That's correct.
 16 Q. Did you have any understanding with regard to how Dr. Angel
 17 calculated the Tribal IIM?
 18 A. It says Tribal IIM is part of the monies that entered the
 19 IIM system. He said...
 16:54:34 20 Q. Let me read his answer to the question. It would take an
 21 accounting to segregate those funds, wouldn't it?
 22 A. That's what he testified to.
 23 Q. Has there ever been an accounting in this case?
 24 A. No, not that I'm aware of.
 16:54:50 25 Q. Did you observe any evidence that was introduced to identify
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1 with any specificity how tribal and IIM funds were to be
 2 segregated?
 3 A. No.
 4 Q. Was there any documentation introduced in that regard in
 16:55:03 5 this litigation?
 6 A. Not that I recall.
 7 Q. Does Ms. Herman testify with regard to how she quantified
 8 Tribal IIM funds?
 9 A. No, I think she relied on Dr. Angel's estimate.
 16:55:17 10 Q. And Dr. Angel said it would take an accounting to segregate
 11 the funds, wouldn't it?
 12 A. That's correct.
 13 Q. Was there any quantification of Tribal IIM funds in any
 14 single year during the period of time that Ms. Herman was using
 16:55:36 15 her database to determine what disbursements or what receipts
 16 were in the IIM Trust?
 17 MR. WARSHAWSKY: Objection. Beyond the scope of cross.
 18 BY MR. GINGOLD:
 19 Q. Did she identify any calculation, any quantification for a
 16:55:51 20 single year?
 21 A. Not that I'm aware of.
 22 MR. GINGOLD: Let's go to Defendants' 372. Your Honor,
 23 this is Defendants' 372 and it starts on 120.
 24 BY MR. GINGOLD:
 16:56:17 25 Q. Were you in the courtroom when Ms. Herman testified?
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1 A. Yes.

2 Q. Were you in the courtroom when Ms. Herman testified about

3 the general ledger, questions related to what --

4 A. Yes, I was.

16:56:30 5 Q. -- what Mr. Warshawsky was asking you about?

6 A. Yes.

7 Q. This page 120 is one of the sheets that she was using -- or

8 that was used in her examination, her cross-examination. And

9 this deals with disbursement. This is disbursement data by

16:56:50 10 fiscal year.

11 You note in 1972, 1973 -- I would like you to look at

12 the first on the left two columns at the top, if we can focus in

13 on this. Do you see 1972 and 1973 have identical disbursement

14 figures?

16:57:13 15 MR. WARSHAWSKY: Objection, Your Honor. Beyond the

16 scope of cross.

17 THE COURT: That is beyond the scope of cross. You're

18 just rehashing what we heard before.

19 MR. GINGOLD: Except that Mr. Warshawsky specifically

16:57:24 20 asked questions with regard to the 1972 to 1985 period based on

21 the disbursement data that Ms. Herman was testifying to.

22 MR. WARSHAWSKY: Your Honor, Dr. Palmer couldn't --

23 didn't know what the GLDL was.

24 THE COURT: I'm going to sustain the objection. Let's

16:57:41 25 move on. Let's not rehearse Ms. Herman's testimony through this

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1 on the CP&R database.

2 THE COURT: Maybe you should just ask him the questions

3 directly instead of bringing up all this old testimony.

4 BY MR. GINGOLD:

16:59:26 5 Q. You sat through the trial for the defendants' case. Why did

6 you use the CP&R database and the PACER database to quantify the

7 disbursements from the Individual Indian Trust?

8 A. During the trial it was brought out from many different

9 witnesses that there were issues regarding the underlying data,

16:59:52 10 the fact that there was not a balance of the information and

11 other information was potentially missing, or the disbursement

12 information or the receipt information was not complete.

13 Because of that, we looked at a period of time when we believed

14 we had full disbursements from the checks and the EFTs, and

17:00:12 15 looked at that and used that as a basis of comparison.

16 Q. And do you believe that is more accurate information?

17 A. We tried to estimate it using the best available information

18 to come up with our numbers.

19 Q. And you stated earlier on direct examination, if you were

17:00:37 20 provided additional information that supported disbursements

21 from the Trust, you would have used it. Correct?

22 A. Oh, absolutely. The model I believe is a good model, and

23 different input, we saw that when we had the data from the first

24 time that this was presented with Dr. Cornell until now, the

17:00:58 25 numbers went down by \$10 billion with the additional data. If

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1 witness.

2 BY MR. GINGOLD:

3 Q. You were in the courtroom when there was testimony with

4 regard to concerns about the disbursement data for 1972 through

16:57:58 5 1985, were you not?

6 A. I believe there were expressions of concern.

7 Q. Is that one of the reasons you did not want to use the

8 reported disbursement data?

9 A. Again, we looked at what we could determine for

16:58:16 10 disbursements in the years where we have information of funds

11 that went out of the Trust, and we used those to adjust the

12 other years of similar information and other years around it.

13 Q. Did you review the testimony of Don Pallais in this

14 litigation?

16:58:32 15 A. I did.

16 MR. GINGOLD: Can we please call up the testimony?

17 THE COURT: Again, why are we using Dr. Palmer to sort

18 of highlight other testimony that we've already heard?

19 MR. GINGOLD: Because this was --

16:58:48 20 THE COURT: It's kind of like arguing what the other

21 testimony means.

22 MR. GINGOLD: A substantial part of Mr. Warshawsky's

23 cross-examination was raising concerns about the methodology

24 used by Dr. Palmer in not accepting the disbursement, reported

16:59:09 25 disbursement data, and why he was applying a calculation based

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1 there's additional data that we don't have or decisions about

2 what should or shouldn't be in, the model is I believe a good

3 model and can be used, that information can be utilized in the

4 model.

17:01:15 5 Q. With respect to the transfers that were identified by

6 Mr. Warshawsky, was there any testimony that you can recall that

7 identified the fact that those funds were disbursed from the

8 Treasury?

9 A. I don't remember. I don't believe they were, but I don't

17:01:34 10 remember specifically. I think the transfers, the funds remain

11 in Treasury. But I don't remember.

12 Q. You were asked a hypothetical question by Mr. Warshawsky

13 with respect to the Osage annuity account. Do you recall that?

14 A. Yes.

17:01:52 15 Q. And he asked you if funds were disbursed out of that account

16 to annuitants, whether or not you believed they were Individual

17 Indian Trust funds or words to that effect. Do you recall that?

18 A. I don't recall the specific question, but he did ask me

19 questions about that.

17:02:10 20 Q. Now let me ask you a hypothetical. If the funds that are

21 held in the particular account identified as the Osage annuity

22 account at Treasury, and those funds belong to the individual

23 Osage Indians, and they are held in trust until the Treasury

24 distributes the money, is it your understanding that those are

17:02:37 25 Individual Indian Trust funds or tribal funds?

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1 MR. WARSHAWSKY: Objection, Your Honor. Calls for a
 2 legal conclusion.
 3 THE COURT: Sustained. I don't think his understanding
 4 is going to do it for me.
 17:02:52 5 BY MR. GINGOLD:
 6 Q. But your answer to Mr. Warshawsky's hypothetical question
 7 was dependent on whether or not those funds are legally the
 8 property of the individuals or legally the property of the
 9 tribe?
 17:03:04 10 MR. WARSHAWSKY: Objection. Leading.
 11 BY MR. GINGOLD:
 12 Q. Is that correct?
 13 THE COURT: I'll allow that.
 14 A. If the funds were for the individuals and included as funds
 17:03:16 15 for the individuals for the IMS (sic) Trust, then they would not
 16 be included. The question that was asked is conditional upon
 17 the fact that those never went into the Trust, never were
 18 available for the Trust, never was part of it.
 19 Q. If they're Individual Indian Trust funds held by the
 17:03:39 20 Treasury in trust.
 21 A. My previous answer --
 22 THE COURT: That's the legal question. Right?
 23 MR. GINGOLD: Well, that is precisely the legal
 24 question, Your Honor.
 17:03:54 25 THE COURT: Then let's not bother this witness with
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1 recite them all. What I would like you to do is to reach
 2 agreement if you can on what's in evidence and what isn't in
 3 evidence and submit a list, and if there's any debate about
 4 what's in evidence, let me hear that much of it tomorrow.
 17:05:32 5 MR. DORRIS: Thank you, Your Honor.
 6 THE COURT: Thank you. We're adjourned until
 7 2:00 o'clock tomorrow.
 8 (Proceedings adjourned at 5:05 p.m.)
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1 that question.
 2 MR. GINGOLD: Okay. Your Honor, no further questions.
 3 THE COURT: All right. I think we've come to the end
 4 of the day. Dr. Palmer, thank you, sir. That completes your
 17:04:07 5 testimony. You're excused. And we will be adjourned until
 6 shall we say 2:00 o'clock tomorrow afternoon? And at
 7 2:00 o'clock tomorrow afternoon we'll hear summaries of the
 8 evidence, and that will complete our business until we get
 9 findings -- let's talk, just while we're here and thinking about
 17:04:32 10 it, have you given any more thought about when we can have
 11 findings of fact and conclusions, proposed findings of fact?
 12 MR. DORRIS: It's fine with us to go with -- I think it
 13 was July 8th was the two weeks out, and that would be fine with
 14 us, Your Honor.
 17:04:47 15 THE COURT: Can you handle that, Mr. Kirschman?
 16 MR. KIRSCHMAN: Your Honor, we would ask for a deadline
 17 of July 11th, Friday.
 18 THE COURT: Why do on Monday what you can put off until
 19 Friday, huh? All right, July 11th it is.
 17:05:04 20 MR. KIRSCHMAN: Thank you, Your Honor.
 21 MR. DORRIS: Your Honor, we have a number of exhibits,
 22 I think both sides, to move in tomorrow. Would it be acceptable
 23 if both sides just submitted -- I think they've largely been
 24 agreed to -- a list before we start closing argument?
 17:05:22 25 THE COURT: Yeah, I don't want you to stand here and
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1 CERTIFICATE OF OFFICIAL COURT REPORTER
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 3 I, Rebecca Stonestreet, certify that the foregoing is a
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 5 above-entitled matter.
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